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S A D R Ž A J

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CROSS-BORDER SUCCESSION ISSUES AND THE ATTEMPTS OF SERBIAN LEGISLATION TO BE HARMONIZED WITH THE EUROPEAN LEGISLATION ON SUCCESSION MATTERS

ABSTRACT: The study deals with the importance of harmonization processes related to the succession rules in the European Union. During the examination of the harmonization processes, a particular attention has been paid to migration, which nowadays has a deep impact on inheritance cases. In this regard the study demonstrates how the judicial cooperation is being realized in the European Union when it comes to succession-related issues. Among these, the study examines the current norms of the Serbian Act on private international law, which, from some aspects, has an obsolete system considering the conflict of laws rules in matters of succession with an international element. Namely, these rules are not harmonized with those of the European Succession Regulation, which means that the Serbian IPL system does not currently follow the European trends in legislation. Furthermore, it does not take into consideration certain current phenomena, especially the international migration and globalization. At the same time, Serbia is working hard to achieve a certain level of legal harmonization with the EU legislation. One proof of the harmonization attempts is the draft of the new PIL act of Serbia. The new concept of the conflict of laws rules and the new systemic approach of connecting factors is nearly completely identical with that of European legislative trends, especially regarding the scope of succession. If the draft act comes into

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force, it will mean, beyond any doubt, a giant leap for the country towards the European Union.

Keywords: the *European Succession Regulation, harmonization, mobility, citizenship, habitual residence, applicable law, jurisdiction.*

1. The causes and the importance of legal harmonization in matters of succession in the European Union

As a result of international migration that has a greater importance nowadays than ever, new problems are arising in the area of family law and succession law. Benefiting from the freedom of movement and freedom of residence, different cultures mix with one another, and people from different backgrounds and diverse legal systems meet in foreign countries. Thus, they are placed under the jurisdiction of a foreign state on the basis of their actual habitual residence but considering their cultural and religious convictions they cannot necessarily identify themselves with the prescribed rules and the culture of said state. Usually, they are still more closely linked to their country of origin.

By way of the abovementioned freedoms, transnational relationships develop, and some of these progress into cross-border family relationships. As it follows from the natural course of things as well as from the finiteness of human life, succession issues also come into focus more and more in a cross-border dimension. The continuous increase of foreign assets owned by people from different nationalities and the increasing number of citizens who settle abroad and acquire assets there requires a comprehensive knowledge of succession norms from legal practitioners at the international and European level not only in theory, but also in practice. It is well known that succession issues are regulated differently by each and every state, but according to the increasing number of cross-border succession matters of fact a certain level of harmonization was necessary in these questions. In order to overcome the difficulties arising from cross-border succession issues, the European legislator also recognized, that a comprehensive instrument which deals with the succession cases including cross-border implications was paramount. The European legislator's recognition resulted in the establishment of the 650/2012/EU Succession Regulation (European Parliament and Council Regulation 650/2012/EU on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate

of Succession),which is applicable nowadays in the states of the European Union.[1]

Within the framework of the integration processes in Europe, the expansion of the European Union which took place on 1 May 2004, has significantly increased the number of European citizens.[2] This was followed by the next expansion in 2007 with the entry of Romania and Bulgaria, which led to further growth in both the territory of the European Union and its population.[3]Following the most recent accession of Croatia,[4]the European Union counts 28 countries by 2013. The significant increase in Europe's population has also clearly had an impact on the increase in cross-border succession cases (Lübcke, 2013. p. 196).The number of succession issues including a foreign element has increasingly necessitated the creation of an EU-level regulation that would allow the smooth handling of succession cases involving several countries. At the same time, the expansion of the European Union has not only made it increasingly necessary and urgent to legislate, but has also made it more difficult, as the number of legal systems to be harmonized has automatically increased with the entry of new Member States (Lübcke, 2013. p. 198).

The privilege of the European citizenship has allowed citizens of the new Member States to move and reside freely, which has also helped more and more people to build up a connection with a Member State other than their own. Thanks to the possibilities of mobilization, a broader dimension has opened up for building up human relations and ties, as a result of which the number of marriages between persons of different nationalities has automatically increased. It follows from the natural flow of things, that these multicultural ties can be causally linked to more complex succession relations. In addition to this, the assets and, where appropriate, the location of this property that can be acquired in a state other than the country of origin should also be mentioned, as an important factor. Namely, these assets will one day due to the eventual death of the owner (deceased) become the subject of the inheritance estate.

[1] With the exception of the United Kingdom, (former member of the EU – until 31 December 2020) Ireland and Denmark, because these EU countries decided to opt out.

[2] That was the first part of the fifth enlargement of the European Union. In 2004 Cyprus, the Czech Republic, Estonia, Poland, Latvia, Lithuania, Hungary, Malta, Slovakia and Slovenia joined. As a result of the newly acceding countries, the number of European citizens has increased significantly, to approximately 450 million.

[3] On January 1, 2007, Bulgaria and Romania, having signed the Accession Treaty on April 25, 2005, became full members of the European Union (fifth enlargement, second part).

[4] Croatia's accession on 1 July 2013 makes it the second country of the former Yugoslavia to join the European Union.

The reasons mentioned above are a good illustration of the fact that the opportunities for people living in European countries have definitively necessitated a solution based on legal unification that is able to harmonize, as far as possible, matters of succession within the European Union.

2. The regulatory concept of the European Succession Regulation and the harmonization of PIL rules through a universal connecting factor in succession matters within the EU

Inheritance law has gained increasing importance from a European perspective. The laws that were previously considered stable are now met with the requirements of modern times and are no longer sufficient. Increasing population migration and foreign property holdings as well as multinational businesses are the features of today's modern European society. Unfortunately, in the event of death and the subsequent cross-border inheritance proceedings the situation is highly complicated due to the various applicable inheritance laws (Załucki, 2018. p. 2317). National rules on succession vary considerably between Member States (as to, for example, who inherits, what the portions and reserved shares are, how wide the testamentary freedom is, how the estate is to be administered, how wide the heirs' liability of debts is, etc.). The harmonization of the substantive succession regulations of various states has in the course of time due to their diversity and differences been classified as an impossible undertaking. A comparison of the different states' succession laws is quite often seen as not fruitful in the light of the differing underlying social, cultural, economic and religious aspects. (Tőkey, 2019. p. 37). It is generally understood to be a senseless exercise (Van Erp, 2007. p. 2).According to the cultural differences in the various states' substantive succession norms, the unification of rules of the EU member states would not be possible at all (Navrátilová, 2008, p. 415). Consequently, there is no other choice, than using the instruments of the conflict of laws, and unify the rules concerning jurisdiction and applicable law. In this manner a connecting factor is also needed. In cross-border inheritance cases, at first and most important thing is to determine which court has jurisdiction to deal with the case and which law shall be applicable to the given case. Practically, only when these two questions are determined, can the succession case be considered as opened. The European Succession Regulation lays down the uniform basic principles of succession matters for the member states, and in this way ensures a fundamentally functional approach at Union level.

A major step in facilitating cross-border succession issues was the adoption of the new Union rules designed to make it easier for citizens to handle the legal aspects of an international succession: the 650/2012/EU Succession Regulation. These new rules apply to the succession of those who die on or after 17 August 2015 (Art. 83. Succession Regulation). The concept of the regulation is an outstanding work and an excellent example of bringing the upper mentioned fundamentally different legal traditions together (Németh, 2015. p. 109).

The differences in substantive succession law are found in the background of the unification of the European conflict of laws rules. The aim of the Succession Regulation is to create unity by harmonizing international private law rules and by ensuring the *international harmony of decision-making* (Vékás, 2019. p. 22).

One of the most important features of the European Succession Regulation is, ensuring that a cross-border succession is treated coherently, according to one single law and by one single authority. In accordance with the main rule, the competent authority of the Member State in which the legator had his/her last habitual residence will have jurisdiction to deal with the succession case (Art. 4. Succession Regulation) and the law of this Member State will be applicable (Art. 21. Succession Regulation). In this way the Regulation defines the same connecting factor for both international jurisdiction and applicable law, which encourages the proceeding authority to apply its own substantive law. According to this the synchronization of *forum* and *ius* is also being realized. The application of a single law by a single authority to a cross-border succession avoids parallel proceedings with possibly conflicting judicial decisions. The EU legislature was guided by the desire to ensure a smooth proceeding of cross-border cases; therefore, the Regulation also ensures that decisions made in one Member State are recognized throughout the Union without the need for any special additional procedure.

A remarkable objective of the Regulation is to avoid for the heirs to be forced to open a succession proceeding in each Member State where the assets are located, so that the legal fate of the estate as a whole can be settled in a single proceeding. At the same time, the European Succession Regulation does not come between the national rules of succession law of the Member States. The form and content of the will, the persons who inherit after the testator, and the proportion of the intestate portion are still governed by the national rules. Therefore, the Regulation does not interfere with the states' substantive succession rules, it only provides an instrument to avoid the complications which are arising in a cross-border succession matters.

Before the habitual residence as a main connecting factor came into general use in the European regulations of the past two decades, there was an intense professional debate in private international law regarding the question of connecting factors. During the elaboration of the connecting factor system of the Succession Regulation, the nationality of the deceased, the deceased's last habitual residence, the deceased's last domicile and the law of the state where the majority of the estate is located were mentioned as potential connecting factors. Prior to the entry into force of the Regulation, the connecting factors applied in each Member State in international succession cases were different. During the negotiation period leading up to the Regulation (2009-2012), 14 out of the 27 Member States followed the principle of nationality.[5] In addition, some states relied on the principle of division of the estate, applying different connecting factors to movable and immovable property.[6] However, the new European codifications of the early 2000s are already firmly dominated by the principle of habitual residence.[7] There is a high degree of similarity between common law legal systems as regards the definition of the law applicable to the succession. To this day, Anglo-Saxon law follows the principle of division of the estate: in case of immovable property, the location of the property (*lex rei sitae*) and in the case of movable property, the last domicile of the testator (*personal law determined by residence*) is applicable. In that regard, it should be noted, for that reason in part, the United Kingdom is not a party to the regulation, regardless of Brexit (Vékás, 2020. pp. 3–4).

Due to the above-mentioned differences, the issue of the introduction of habitual residence, which can now be considered as a tradition in European legislature, was far from clear when the European Succession Regulation was drafted. The issue of the connecting factor has been the subject of much debate in the development of a European set of rules governing succession.

In the contest to choose the most suitable connecting principle, citizenship was undoubtedly the most likely, next to the last habitual residence. The fact that citizenship can be easily established without further steps and that citizenship is a solid, less modifiable link between a state and the citizen was

[5] Member States following the principle of nationality: Greece, Italy, Austria, Poland, Portugal, Sweden, Slovakia, Slovenia, Spain, Bulgaria, Germany, the Czech Republic, Hungary and, in the case of movable property, Romania.

[6] For example, France has ordered the application of the law of the testator's last place of residence in the case of movables and the law of the state where the assets are located in the case of immovable property.

[7] This is reflected e.g. in Belgium (2004), Bulgaria (2005), Poland (2011), the Czech Republic (2014), and Romania (2011).

in favor of maintaining citizenship as a connecting factor. In addition, the argument in favor of citizenship was that the application of the testator's own national law would best reflect his or her will, taking into consideration his or her cultural and religious beliefs. While citizenship constitutes a legal bond between a person and a state and, in addition, confers different rights on a citizen, the choice of an individual's habitual residence as the territory of a particular state does not necessarily create a legal bond or *ipso iure* rights in connection with the person residing in a given State (Páli, 2017, pp. 48–49). Accordingly, the habitual residence is easily changeable, therefore, an easily changeable connecting factor undermines legal certainty when planning the legal fate of the assets (Caravaca, Daví & Mansel, 2016, p. 315).

In 2009, when the draft regulation was published, there was still no complete agreement on the issue of the connecting factor (Rat der Europäischen Union. Dok. Nr. 11067/11, pp. 6–8). As Vienenkötter points out, the fixation of habitual residence as a connecting principle was finally the result of a compromise package (Vienenkötter, 2017, p. 265).

Despite consistent arguments in favor of citizenship, in the field of inheritance law, the choice of the last habitual residence in the competition of connecting factors ultimately fell. The fact that the residence principle is better aligned with integration and mobility policies played a major role in the decision. Furthermore, the principles of the freedom of movement and residence are being more represented by the habitual residence as connecting factor. The fact that residence is increasingly dominant in European regulations has also played a role, that is to say, the introduction of this connecting factor has been more in line with the EU's legislative trend (Balogh, 2020, p. 26).

3. The European Succession Regulation in relation to third countries

The recognition and implementation of decisions made within the European Union in the member states is now taking place quickly and without obstacles. The difficulties arising from the respective life situations can be basically solved thanks to the unified and consistent provisions of European succession norms.

At the same time in those cases where the European regulation and the international regulations of a third country collide, there is not necessarily a solution that leads to a clear and practical result after weighing the legal norms of both sides equally. The norms of the Succession Regulation provide solutions for numerous problems that have arisen in the past and are difficult

to overcome, but there are some questions in connection with inheritance cases with cross-border implications which still await a clear solution. The Regulation deals withboth the issues of jurisdiction and applicable law universally; that is, the scope of this regime also extends to those inheritance cases where the facts are only linked to a third state and not to another EU member state. As far as conflict-of-laws rules are concerned, the 'Rome-type' regulations that were drafted years ago also provide universal regulation. However, the universal regulation of jurisdiction, i.e. to cover the situations related to third countries by supplementary jurisdictional rules, is a relatively new phenomenon in the EU legislative process itself (Szőcs, 2019, p. 46). Although Serbia is not a member state of the European Union, cross-border succession issues are identified quite often. While the scope of the EU Succession Regulation is not applicable in Serbia, it's the PIL rules that have an important role in the case of succession cases containing an international element. As in every conflict of laws case, the fundamental question is which court will have jurisdiction and what law shall be applied in such cases. According to Art 30. of the IPL law of Serbia on succession matters the law of the state of which the testator was a citizen at the time of death is applicable (Art 30. Act on Private International law of Serbia). According to this, the main connecting factor is different from the concept of the EU Succession Regulation because it is based on the citizenship in private international law matters, including the matters in connection with succession.

The background of the Serbian connecting factor can be traced back to the Serbian IPR legal history. Serbia inherited its private international law recently (2003) from the Federal Republic of Yugoslavia (Stanivuković, 2006, p. 122).

The living conditions at that time were very different from those of today, where a parallel life in several countries and the migration processes are a common occurrence. The fact that the Serbian legislator applies decades old legislation to this day and considers standards that do not cover current life situations to be adequate can be used as a base for criticism. At the time of the enactment of the Serbian PIL law, the legislator defined citizenship, as the most obvious link for determining the jurisdiction and applicable law. The circumstances of that time, the bond of citizenship had a different meaning than it does today. In general, a person had and could have only one nationality, as globalization and mobility did not play as large a role as they do today. On the other hand, dual citizenship was not as easily accessible as it is today, as in general a change of citizenship could only take placeif the previous citizenship was replaced by the new one.

On the other hand, at the time the law was enacted, it was considered that personal rights, family law relations and inheritance issues should depend primarily on the laws of the state in which the persons concerned live. In addition, they sought to provide enhanced protection from foreign courts for Yugoslavian citizens who lived abroad and did so under the exclusive jurisdiction of the court of their nationality. In the national laws of most states, a new vision for the acquisition of citizenship has emerged in recent decades, which is more permissive than the previous system. Current regulations no longer exclude the possibility of dual citizenship and most countries have now abolished the termination of the former citizenship as a condition for acquiring the new one. Dual citizenship is therefore now a fully accepted phenomenon and is even particularly supported by some countries (Stanivuković, 2006, pp. 125–128). The large number of international marriages also has a significant impact on dual nationals, with the consequence that spouses can retain their own nationality, consequently their child will automatically have two nationalities. Based on all this, it can be concluded that the Serbian Private International Law Act, despite the structural changes that have taken place in recent decades, has not adapted its perspective to the current situation and cannot keep pace with the changes resulting from current living conditions.

Citizenship is a legal category which changed its fundamental meaning in the past two decades. International norms on citizenship and the theoretical understanding of its nature have changed. Citizenship shares the fate of the nation state concept and the weakening of its sovereignty in the international community.

Although the current Serbian IPL law does not follow the dynamics of the current social developments, the elaboration of the new PIL code has nearly come to its end. The Serbian PIL draft of 2014comprises altogether 199 provisions, which is to the possible extent harmonized with the *acquis communautaire*[8] and takes into account not only the Rome I, II and III-regulations, but also the Succession regulation as well as the Brussels I (Recast) and Brussels IIa regulation (Jessel-Holst, 2016. p. 138). The draft of the new Serbian PIL code breaks with the citizenship principle as a connecting factor in international succession matters and introduces domicile or habitual residence as a main connecting factor. As it can be seen from the draft of the new Serbian IPL act, Serbian courts shall have jurisdiction to rule on the succession as a whole if the deceased had his/her domicile or habitual residence in Serbia (Art. 114.

[8] The accumulated legislation, legal acts and court decisions that constitute the body of European Union law.

of the draft of the new Act on Private International law of Serbia). In this same article the Serbian draft contains another very important provision, namely the principle of the unity of succession. This principle has great importance, mainly because the European Succession Regulation also follows the principle of unity of succession. Thismeans that the succession is governed as a whole, that is to say, all of the property forming part of the estate, irrespective of the nature of the assets and regardless of whether the assets are located in another Member state or in a third State should be handled in one single procedure (Preamble Art. 37. of the European Succession Regulation). The principle of unity of assets aims firstly to avoid parallel procedures. Therefore, according to the European Succession Regulation, it is not possible to apply the principle of division of the estate, i.e. to determine the legal fate of movable and immovable property according to different states' rules. It is a welcome development that the draft of the new Act on PIL of Serbia also foresees the principle of unity of succession, and at this point is also conceptionally fully harmonized with the EU Succession Regulation.

In general, it must be pointed out, that the draft of the new Act on PIL of Serbia contains regulations which follow the European legislative trends and are up to date concerning the most significant social phenomena such as mobility, migration, and globalization. As a result, with the coming into force of the new PIL code, Serbia will be one step forward on the way to the European Union.

4. Conclusion

As a reaction to the migration processes which are being more than actual in current times, and have a major impact on succession issues, the European legislator has introduced an effective instrument, in order to avoid complications resulting from cross border succession cases. Since 17 August 2015, the European Succession Regulation has been applicable in every EU Member State with the exception of the United Kingdom, Ireland and Denmark. The Regulation contains provisions on succession cases with a transnational component. This EU Succession Regulation does not, however, affect the provisions of individual Member States in the areas of substantive inheritance law (e. g. the question of who is a legal heir) and inheritance tax law. One of the biggest improvements of the Regulation is the introduction of the last habitual residence of the deceased as a connecting factor. Accordingly, the jurisdiction and the applicable law governing the succession case is determined based on the last habitual residence of the deceased. This concept fits to the European

legislative trend and takes into consideration the process of globalization. Considering the harmonization level of Serbia with the EU succession rules, at the time being, the Serbian conflict of laws rules and connecting factor system is not in line with the EU Regulation. Nevertheless, the new draft of the Serbian act on PIL will increase the level of harmonization when it comes into force.

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PREKOGRANIČNI NASLEDNOPRAVNI SLUČAJEVI I POKUŠAJI HARMONIZACIJE SRPSKOG ZAKONODAVSTVA SA EVROPSKIM ZAKONODAVSTVOM U OBLASTI NASLEDNOG PRAVA

REZIME: Predmet studije jeste značaj harmonizacije prava u Evropskoj uniji sa posebnim osvrtom na naslednopravna pravila. U okviru ispitivanja harmonizacionih tokova posebna pažnja se posvećuje migraciji čija pojava u sadašnjem vremenu vrši jak uticaj na naslednopravne slučajeve. U ovom pogledu studija će prikazati na koji način se pravosudna saradnja realizuje u Evropskoj uniji kada su u pitanju slučajevi u vezi sa nasleđivanjem. Osim toga, studija razmatra odredbe Zakona o sukobu rešavanja zakona sa propisima drugih zemalja Republike Srbije, koje se odnose na naslednopravne slučajeve sa međunarodnim elementom, i koje u nekom pogledu imaju zastareli sistem pravila, što setiče kolizionihodredaba i tački vezivanja. Naime, trenutno važeća pravila nisu u skladu sa pravilima koja predviđa Evropska Uredba o nasleđivanju, što ukazuje na to, da sistem trenutno važećeg zakona o međunarodnom privatnom pravu Republike Srbije ne prati evropsko-pravne zakonodavne trendove. Štaviše, ne uzima u obzir značajne pojave današnjeg vremena poput migracije i globalizacije. Istovremeno, ističe se, da Srbija uporno radi na postizanju određenog nivoa harmonizacije sa zakonodavstvom Evropske unije. Izvestan dokaz za pokušaj usaglašavanja na srpskoj strani manifestuje se u nacrtu no-

vog zakona o međunarodnom privatnom pravu. Novi koncept kolizionih pravila i novi sistem tački vezivanja gotovo su u potpunosti identični sa evropskim zakonodavnim trendovima, a to se posebno može utvrditi i za oblast naslednog prava. U slučaju da nacrt novog zakona bude prihvaćen i usvojen, te stupanjem na snagu novog zakona Srbija će napraviti ogroman korak ka Evropskoj uniji.

Ključne reči: *Evropska Uredba o nasleđivanju, harmonizacija, mobilitet, državljanstvo, uobičajeno prebivalište, pravo koje se primenjuje, nadležnost.*

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OBLIGATIONS OF THE CONTRACTING PARTIES IN THE SERVICE CONTRACT

ABSTRACT: The subject of the paper are the obligations of the contracting parties, i.e. the contractor and client, arising from the conclusion of a service contract. A service contract is one of the oldest forms of contractual obligations, but it is also a contract constantly being changed and adapted to emerging life situations. A service contract is a consensual, nominate, onerous and bilaterally binding contract. Therefore, it is a contract in which the obligations of the contracting parties are determined. The contractor has the obligation to complete the work, and hand it over to the client, while the client is obliged to pay remuneration for the contractor`s work. Also, one of the distinguishing facts of a service contract is that it is often concluded with regard to the contractor's personality, so the fulfillment of the obligation is related to the personality of the contractor due to whose attributes the contract was concluded.

***Keywords*:** *Service Contract, Contractor, Client.*

1. Introduction

The service contract was known in Roman law as well (Maksimović & Despotović, 2016, p. 32). It originates from the Roman contract *locatio conducti*, as a common name for three similar forms of contract at the time, but

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today completely different contracts, namely: the service contract, the manpower supply service agreement (*locatio conductio operarum*) and the lease agreement (Ognjanović, 2010, p. 185). According to the contract, one party entrusted the other with a certain asset, and it was obliged to perform certain work on it for a certain remuneration.

In the Middle Ages, the contract had a reduced scope of application. It was mainly used in the relations between craftsmen and merchants, where craftsmen were not able to procure raw and other materials (Zindović, 2010, p. 163).

In the contemporary law, individual contracts (construction contract, copyright and publishing agreements, etc.) have been separated from the service contract, and they represent special nominate contracts, while the service contract is a special type of contract concluded for performing activities not covered by the aforementioned special contracts.

2. Obligations of the Contractor

Parties in obligatory relations are obliged to cooperate in order to achieve the legal effects of the concluded contract (Pavlović, 2014, p. 583). With the service contract, the contractoris obliged towards the client to fulfill the obligation assumed during the conclusion of the contract. The work the contractor takes on can be different, e.g. making new items, remodeling, or repairing existing items, creating paintings, sculptures, costumes, translation services, etc. Therefore, the work is performed through the use of the contractor's mental or physical abilities (Kalamatiev & Ristovski, 2015, p. 187). Also, the work of the contractor can be to complete a service (Maksimović, 2018, p. 60). Often, the contracting parties determine the obligation of the contractor to act in accordance with the professional practice and the nature of a particular work, as well as the professional activity and attention of a good businessman. During the fulfillment of contractual obligations, certain inconsistencies may appear between the contract and the professional practice rules for a given work, in which case the contractor is obliged to immediately inform the client about the aforementioned, and to act according to the requests and instructions received from the client. All of the above indicates the contractor must achieve the contracted result. This means it should achieve the contracted result, ie. the result expected by the nature of the work itself. In cases when the result cannot be expected with certainty due to the peculiarities of the relationship, then the contractor is responsible only for the correctness of the work in the aforementioned manner (Blagojević & Krulj, 1983, p. 1055).

If the work material is provided by the client, the contractor is obliged to examine the quality of the material and to warn the client of possible defects. The contractor is obliged to warn the client of deficiencies in his order as well as other circumstances he/she knew or should have known, which could be relevant to the ordered work, otherwise he/she will be liable for the damage (Judgment of the Supreme Court of Serbia No. 4374 / 97 of December 2, 1997, as cited in Krsmanović, 1999, p. 1514).

In order to be cleared of liability for the noticeddeficiencies, it is not enough just to notice them, but to immediately inform the client about them. The contractor is obliged, after the work is complete, to hand over the item to the client, and the latter is obliged to inspect the item and in case of defects, immediately inform the contractor (Ožegović, 2008, p. 35). The contractor is responsible for the shortcomings of the material even when he/she chooses it with the consent of the client (Judgment of the Supreme Court of BiH, No.1162/71 of March 9, 1972 - Bulletin of the BiH Supreme Court, No. 24/72, as cited in Tajić, 2009, p. 734). To exercise the right due to material shortcomings of the delivered material making it unsuitable for the contracted purpose, it is not enough for the contractor to invite the client to perform an inspection determining the defects, but it is obliged to invite the client to replace it, and if they decide to terminate the contract, the contractor is obliged to make the material available to the supplier, ensure its safekeeping, and make a sale for the account of the client (Judgment of the Supreme Court of Serbia Rev. 2379/97, as cited in Krsmanović, 1999, p. 227). It is possible the client insists on the use of defective material that is not disputable, in which case the contractor is not liable for any shortcomings in the execution of the work.

An exception to the rule exists if the use of unsuitable material would endanger the health of the client, other people or if the use of such material would be contrary to regulations, norms or standards, and entail certain liability to the contracting parties. If the client did not provide quality material to replace the unsuitable one, the contractor would have the right to unilaterally terminate the contract. If the contracting parties have agreed the contractor provides the material, it is necessary to be of medium quality, which is determined by the valid or adopted standards for the given type of material. The law stipulates the contractor is liable to the client for the quality of the material used, same as the seller (Ožegović, p. 135).

The defect of material is present: if the item does not have the properties for its regular use or trade; if the item does not have the necessary properties for the special use, for which the buyer procures it, and which was known

to the seller or must have been known to him/her; if the item does not have the properties and characteristics that are explicitly or tacitly agreed, ie. prescribed; when the seller has handed over an item that does not comply with the sample or model, unless the sample or model were shown for information only (Ibid., p. 111).

Therefore, these are the following obligations of the contractor: the obligation to perform work as agreed in the contract, the obligation to cooperate during the commission of the work, fulfillment of the contracted obligation within the agreed time, the obligation to hand over the work and in the agreed place. The cooperation of the contracting parties in the performance of certain tasks is necessary in order to fulfill the contractual obligation of the contractor, and the client to be satisfied with the result, the right of the client in line with Article 603 of the Law on Obligatory Relations is to supervise the work and provide instruction when the nature of work requires it. The deadline for the execution of the contractual obligation is agreed by the contracting parties, and if the parties have not done so, the deadline within which the contractor is obliged to fulfill the obligation represents a reasonable deadline for the contracted work. Reasonable time is a factual issue and depends on the nature of the contracted work and the circumstances of each individual case. If there is a disagreement regarding the reasonable deadline, the court shall determine the disputable issue by an expert opinion. The expertise is related to the time required for the execution of the work according to the customs in the place of execution, but also according to the standards related to the area of execution of the contracted work.

The contractor will not be liable to the client in case of delay in the execution of work if the client did not submit the material for production within the deadline specified in the contract, if the client requested changes in the execution of the contracted work, if the client did not pay the advance that was his obligation, and other cases caused by the fault of the client. If the fault of the delay in the execution of the contracted work falls on the contractor, the client has a right to compensation, and if a contractual penalty has been agreed, the client is entitled to compensation exceeding the amount of damage. However, the contractor can be released from the obligations if he/she proves the delay was due to a cause for which he/she is not responsible. However, the contractor will not be released from the obligation even if the impossibility of fulfillment was not his/her fault, if the impossibility occurred after the delay. In situations where the oversight of the client was present, but the delay was partially caused by the contractor itself, a case of shared responsibility arises (Blagojević & Krulj, 1983, p. 1505). After

concluding a contract, it may happen the contractor does not adhere to the agreed conditions and does not work according to the instructions of the client, which is why the work will have shortcomings and the result will not meet the needs of the client. When the client instructs the contractor to eliminate the identified deficiencies within the given deadline, and the contractor does not act on this, it is obliged to reimburse the client for the amount it paid to a third party to rectify the deficiencies (Judgment of the Supreme Court of Serbia No. 586/96, as cited in Ćosić, 1998, p. 243). When the client warns the contractor and sets an appropriate deadline for him/her to adjust the work to his/her obligations, and the contractor does not act upon the request of the client, the client in addition to terminating the contract, may request thecompensation for the damage occurred. In the case when the contractor did not perform all the foreseen work from the contract, and the client paid the foreseen amount for the contracted work in advance, there is an obligation of the contractor to compensate the client's damage due to less performed work (Judgment of the Supreme Court of Serbia No. 614/96, as cited in Ćosić, 1998, p. 243). When the completed work has such shortcomings making it unusable or it is performed contrary to the explicit conditions of the contract, the client may, without seeking prior elimination of defects, terminate the contract and claim damages (Judgment of the Supreme Court of Serbia No: 2222/97 of January 14, 1998, as cited in Krsmanović, 1999, p. 231). When the contracting parties set out a deadline as an important element of the contract, and the contractor is in such delay regarding the contracted work that he/she did not even start with it, which is why he/she will not complete the work within the agreed deadline, the client can unilaterally terminate the contract and claim damages. The right of the client does not refer only to the situation when the deadline is an important element of the contract, but also in the case when due to a significant delay of the contractor, the client would no longer have an interest in completing the contract. Therefore, the client has the aforementioned right even when the existence of a deadline as an essential element of the contract has not been agreed (Manojlović, 2020, pp. 150–152).

3. Transmission of the Order to the Client

Order transmission is a bilateral legal action, meaning it consists not only in the transmission of the order by the contractor as an obligor, but also the simultaneous taking of the order by the client as a trustee. The contractor is obliged to hand over the manufactured or repaired item to the client (Law on

Obligatory Relations, Article 613). The contractor is released from the obligation if the item he/she made or repaired fails for a reason for which he/she is not liable. The liability of the contractor is present in the case of failure of a made or repaired item when he/she is unable to hand over the made or repaired item because it is individuallymodeled. The contractor is released from the obligation if the item made fails for a reason which is not his/her responsibility, ie. in the case of force majeure or actions or oversights of a third party for which it was responsible (Dudaš, 2010, p. 156). The contractor has to hand over the items to the client as agreed, ie. witimethin the agreed deadline, in the agreed place, the agreed quality and quantity. If the contracting parties have not determined the place of order transmission by contract, it is determined by the purpose of the order, the nature of the obligation and other circumstances, and even if the place of order transmission cannot be determined, the order transmission must be performed according to the contractor's seat and residence at the time of the obligation.

The transmission of the order can be physical or symbolic and it has to be done within the deadline determined by the contract or within the deadline assumed by the nature of the work. If the contractor does not fulfill its contractual obligation within the agreed deadline, he/she falls late and bears the consequences arising from the delay.

4. Contractor's Liability for Subcontractors

The contractor is liable in all respects for the work of its subcontractors as well as other persons to whom the work was partially or completely assigned (Judgment of the Supreme Commercial Court - Sl. 124/68 of June 11, 1968, as cited in Krulj, 1983, p. 1507). The contracting parties, when the nature of the work allows it or when nothing else arises from the contract, may agree to entrust the work which is the subject of the contract to third parties. This does not release the contractor from the obligation towards the client and it is responsible to the client even when he/she does not perform the work personally. The contractor's hiring of subcontractors does not imply bringing the subcontractor in direct relation with the client, it does not release the contractor from his core obligations (Judgment of the Supreme Court of Serbia 624/95, as cited in Ćosić, 1998, p. 241). If during the work the subcontractor causes damage, the contractor that hired him is liable as well. The contractor may be released from liability to the client if he/she proves the damage is not the result of his/her direct guilt.

5. Direct Request of Subcontractors to the Client

According to provisions of the Law on Obligatory Relations, to collect their receivables from the contractor, subcontractors can contact the client directly demanding the payment of receivables at the expense of the amount the client owes to the contractor at the time if these receivables are recognized (Radovanov, 2011, pp. 250–252). In this way, the legislator improved the economic position of the subcontractors. The subcontractors are given the right to ask the client to pay their remuneration for the account of the recognized receivables of the contractor. Mutual claims of the contractor towards the client and the subcontractor towards the contractor must be indisputable and liquid. When the client pays a part of the amount of money that represents the undisputed work of the subcontractor, he/she is released from the obligation towards the contractor for the given amount. The subcontractorswould not have the right in case the client and the contractor agreed the obligation of the agreed remuneration is paid after the execution of the agreed work, ie. the order transmission. Nevertheless, the subcontractor would have a recognized capacity of the intervener in the event of a dispute between the contractor and the client, because he/she has a legal interest based on the engagement of the contractor and the work invested.

6. Contractor's Defect Liability

After the contractor submitted the order to the client, the client is obliged to inspect the work as soon as possible according to the normal course of things and to inform the contractor about the observed shortcomings without delay. If the client does not respond to the contractor's invitation to inspect and receive the work without a justified reason, it shall be considered the work has met the required criteria of the client and the client has achieved the required result. In this case, the risk of accidental ruin or damage to the work or thing passes to the client.

Although it is presumed the client received the order, the contractor is obliged to keep it or to hand it over to the court or a person designated by court, but in that case besides the right for reimbursement of safekeeping costs, the contractor has the right to remuneration. When the inspection and delivery of the items to the client has been performed, the contractor is no longer liable for the defects that could have been noticed by the ordinary inspection, unless he/she knew about them and did not show them to the client. This norm is not imperative, so the parties can agree on a deadline for complaints, depending

on the nature of the work and other circumstances. When the client refuses to inspect and receive the item without a justified reason, then he/she falls into delay in payment (Tišić, 2018, pp. 175–184). In the situation when the client takes over the work without objection, the legal presumption that the work was without defects is fulfilled. Hidden deficiencies may also occur during the service contract period. Hidden defects are deficienciesthat the customer could not notice with a simple inspection. If such deficiencies are noticed, the client may reasonably point out this objection, but no later than within one month from the day of its discovery.

The objection in question may be raised within two years of receipt of the completed work, after the expiration of theperiod, the client loses the right to invoke hidden defects. Pursuant to the Law on Obligatory Relations (Karanikić Mirič, 2020, pp. 27–29), the client that informed the contractor in time about the deficiencies of the work performed, cannot exercise its right in court after one yearfrom the notification, but even after the expiration of the period, the client may, if it notified the contractor in a timely manner, by an objection against the contractor's request for remuneration payment, to assert its right to a reduction of remuneration and compensation for damages. When the client has duly informed the contractor the item or work has a defect, he/she may request from him/her to eliminate the defect and set an approximate completion deadline.

However, if the costs of eliminating the defects are excessive, the contractor may refuse to eliminate the defects, in which case, the client has the right to request a reduction of remuneration in proportion to the extent of the defects, and may request termination of the contract (Art. 616, Law on Obligatory Relations). In the case when the contractor did not act in accordance with the agreed conditions due to which the item has such defects making it unusable, the client may terminate the contract without seeking prior elimination of deficiencies and demand compensation from the contractor. On the other hand, when the work has not been completed, contrary to the explicit conditions of the contract, and the item has such defects making it unusable, the client has the obligation to allow the contractor to eliminate the defects within a reasonable time. If the contractor does not eliminate the defects presented to him/her by the client within a certain period, the client has several options: to eliminate the shortcomings at the expense of the contractor, reduce the remuneration or terminate the contract, but if it is a minor defect, the client cannot unilaterally terminate the contract.

When the contracting parties have agreed the contractor makes the ordered items in parts, the client has the right to inspect each part individually,

and the contractor has the right to remuneration for each part separately that transfers the risk of loss or damage to the client. In any case, the client has the right to compensation, and the contractor cannot invoke the exclusion of his liabilityfor the shortcomings when theyare related to the facts known to the contractor that he/she did not communicate to the client (Obradović, 1999, p. 122).

7. Client's Obligation to Cooperate

Previously, it has been stated the client has the obligation to cooperate with the contractor in performing the work, other obligations relate to the payment of remuneration and the receipt of work. In order for the client to cooperate with the contractor, the contractor is obliged to enable the client to cooperate in the execution of work. Mutual cooperation is in mutual interest because the given instructions, suggestions and guidelines facilitate the execution of work, but also reduce the contractor's eventual liability if during the execution of work he/she moved within the client's given instructions.

Forms of cooperation can be differentdepending on the type of work, from the submission of appropriate material, control and supervision, successive receipt, but also the work as a whole. The greater the cooperation and participation of the client, the greater the chances of achieving the desired result. The rights of supervision of the client are not unlimited, but are limited by the needs of work refraining from interfering with the contractor's work.

8. Work Receipt Obligation

The provisions of the Law on Obligatory Relations solve the theoretical question, whether receiving - taking the ordered work performed in accordance with the contract is the right of the client or at the same time its obligation. In a situation when the client refuses to receive the completed work without a justified reason or prevents its receipt, the client is in delay. The client is obliged to receive the work in accordance with the contract, the purpose of the work, the nature of the obligation and other circumstances (Babić, 2001, pp. 410–411). The client may receive the work explicitly or tacitly, when the client leaves the item with the contractor after he/she has inspected and received it, a new obligatory legal relationship is established, ie. a storage contract. When the client, contrary to the provisions of the contract, refuses to receive the work, which in all respects corresponds to the contractor's obligation and the expected result, the client is in delay and from that moment bears

the risk of accidental loss or damage to property. In case of delay of the client, the contractor may be released from the obligation to hand over the item by handing over the item to the court deposit or to a person assigned by the court for safekeeping at the expense and risk of the client. By taking the item, all the risk of ruin or damage to it passes to the client. The contracting parties may stipulate in the contract the handover of the work is recorded in the minutes.

By compiling the minutes, it would be precisely determined the contractor handed over the item to the client, and that is of exceptional importance for the contractor, because from that moment he/she is released from all responsibilities specified in the service contract (Perović, 1980, p. 727). In the case where the contracting parties have determined the intellectual work as the subject of contract, the receipt of the work will be done by taking appropriate actions that enable the performance of such work.

9. Service Contract Remuneration Process

After the contractor fulfills its obligation and hands over the item, ie. completes the contracted work, the client is obliged to pay the remuneration on time, at the place, and in the manner determined by the contract. The obligation of the client in the service contract is due at the same time as the delivery of the item, unless otherwise agreed, for which the contractor is authorized to refuse delivery of the item if the client is unable or refuses to fulfill its obligation (Judgment of the Supreme Court of Montenegro No. 347/96 of September 12, 1996, as cited in Obradović, 1999, p. 126). When the client receives the item without objections, and the court determines the service was performed well and meets the conditions of the contract, the client is obliged to pay the agreed remuneration, even when the contractor fulfilled the obligation from the contract with delay (Decision of the Supreme Court of Bosnia and Herzegovina No. 512/86-87, as cited in Obradović, 1999, p. 126). The contracting parties may agree on different forms and modalities of remuneration, so in addition to payment in a fixed amount, payment may be determined in installments that would be due for payment with the execution of contractual parts of the work.

As a general rule, the parties determine the remuneration by contract, but the fee will be determined by established tariffs or price lists. When the price of services is not explicitly specified in the contract, it is considered the contracting parties have accepted the price the contractor (specialized company) regularly charges for that type of services (Decision of the Supreme Court of BiH, No. 44/70 of December 17, 1970, as cited in Tajić, 2009, p. 737).

Depending on the nature of the work and its complexity, the parties may agree on criteria for changing the agreed fee. Remuneration for work performed can also be paid in advance or as a deposit. This will most often be the case when the contracting parties have agreed the contractor will provide the material, and the payment will be made successively according to the execution, ie. the performance of the contracted work. In that case, the client has the right to inspect each part individually.

After the contractor has completed the work, and the parties have not determined remuneration in the contract, and in the case the parties cannot agree on the fee, the fee will be determined by the court based on the contractor's working hours, job complexity, other circumstances and usual fees for the given type of work. In the case when the remuneration for the work to be performed is agreed on the basis of a budget with an explicit guarantee of the contractor for its accuracy, the contractor cannot request an increase in remuneration, even if he/she has invested more hours and if the work required higher costs than foreseen. This does not exclude the application of the rules and procedures on termination and amendment of the contract due to changed circumstances (Art. 624, Law on Obligatory Relations). But, if the compensation is agreed on the basis of the budget without an explicit guarantee of the contractor for its accuracy, and during the work the budget overrun proves inevitable, the contractor must notify the client without delay, otherwise he/she loses any claim due to increased costs. If there is a significant increase in costs, and the client loses interest in performing the contracted work, it has the right to terminate the contract without the consent of the contractor (Karanikić Mirić, 2020, pp. 27–29).

10. Conclusion

With the service contract, the contractor is obliged to perform certain work for the client, and the client is obliged to pay remuneration for the service. The subject of a service contract is the performance of a service or work, provided it cannot be legal work. First of all, it implies the creation or repair of an item, or the execution of some physical or intellectual work.The service contract, as a bilaterally binding contract, creates obligations and rights for both parties.There are three basic obligations of the contractor: the obligation to complete the work, the obligation in case of work deficiencies and the obligation to submit the completed work. In addition to these obligations, the contracting parties may include other obligations.

The basic obligations of the client in the service contract are the obligation to payremuneration, the obligation of appropriate cooperation in the execution of the work, and the obligation to receive the work. The contracting parties may also agree on some other obligations.The service contract is also characterized by the possibility of its termination by the unilateral will of the client. Namely, until the ordered work is completed, the client can terminate the contract whenever he/she wants, because the work is the subject of his/her interest.

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OBAVEZE UGOVORNIH STRANA IZ UGOVORA O DJELU

REZIME: Predmet ovog rada jesu obaveze ugovornih strana, poslenika i naručioca, nastale zaključivanjem ugovora o djelu. Ugovor o djelu je jedan od najstarijih oblika obligacionih ugovora, ali je istovremeno i ugovor koji se konstantno mijenja i prilagođava novonastalim životnim situacijama. Ugovor o djelu je konsesualan, imenovani, teretan i dvostrano obavezni ugovor. Dakle, ugovor u kome su određene obaveze ugovornih strana. Poslenik ima obavezu izvršenja posla, predaje stvari naručiocu, dok naručilac posla ima obavezu da plati naknadu za ugovorni, izvršeni i priznati posao poslenika. Odlikuje ga i to što se često zaključuje s obzirom na ličnost poslenika, tako da je izvršenje obaveze vezano za ličnost poslenika zbog čijih svojstava je ugovor i zaključen.

Ključne riječi*: ugovor o djelu, poslenik, naručilac.*

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SMUGGLING AND ILLEGAL TRADE AS FORMS OF ECONOMIC CRIME

ABSTRACT: Economic crime is a very complex criminological and legal category. The modern economic crime is characterized by a variety of manifestations. It tends to become increasingly better organized which, among other things, makes its detection, the collection of the evidence material and the criminal prosecution of the culprits much more difficult. In view of the importance as well as the comlexity of the economic crime subject-matter, this paper discusses smuggling and illegal trade. The research included a criminological analysis of the economic crime, a normative analysis of the criminal acts mentioned above, as well as an analysis of the presence of the adult persons being reported, charged with and convicted of the previously mentioned criminal acts in the total values for the group of criminal acts against economy and at the level of Serbia, for the year of 2019.

Keywords: *Economic crime, Smuggling, Illegal trade, Criminal Law, Republic of Serbia.*

1. Introduction

It became clear a long time ago that social rules and norms are not always complied with. People most often observe them (especially speaking of grave offences) out of the fear of punishment. However, it is impossible to make a strict division of citizens into those who comply with the established

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rules and those who do not. Whether someone is going to commit a particular offence often depends on the circumstances in which the person found themselves, their way of life up to that moment, their personal and family situation, their health, financial, or emotional state, or other circumstances.

In addition, the way a society treats specific forms of deviant behaviour of individuals (or groups) mostly depends on the mentality, culturological development, and attitude of a specific community towards the criminal acts. Equally decisive in this respect are the criteria of economic stability and political situation in certain locations. In this context we can say that what is stigmatized and defined as a wrongful act in one society does not have to be defined as such in another.

On the other hand, whatever the attitude of a social community towards deviant behaviours and offences in a broader sense, it must be admitted that in a most general sense crime is, in view of many such attitudes, defined as "a shadow of civilization" (Bhusal, 2009, p. 12).

Crime is "a very complex phenomenon, equally damaging in all societies and on all development levels. For the concept of crime to be understood, it must be considered by applying a multidisciplinary approach, i.e. by applying knowledge from different theoretical disciplines" (Matijašević, 2012, p. 52). While stating this, we must emphasize that "multidisciplinarity as an approach to analyzing criminality is not a matter of choice, but represents a necessary approach to this complex social phenomenon" (Bjelajac & Matijašević, 2014, p. 534).

In principle, "every form of human activity is more or less exposed to damaging effects, and wherever there are people and their activities, there may appear lower- or higher-risk effects on the surroundings. Economy as a form of human activity is not protected against crime, and is very often the place of various criminal acts and offences" (Đekić, 2016, p. 783).

Bošković and Marković (2015) state that "Economic crime is a form of delinquency and a typology of criminal phenomena depending on violations of regulations in economic and financial operations. In their opinion, it is a phenomenon with different definitions, depending on the wrongdoing classification criteria and the scientific-methodological approach. Some views are based in the criminal-law provisions relating to acts against economy, and others in the object of criminal-legal protection, i.e. acts aimed towards abuses and other forms of illegality, with regard to the organization and functioning of the economic system and financial operations" (p. 209).

The modern definition put forward by Banović defines Economic crime as "a sum of all punishable behaviours (commissions or omissions) which

develop in economic relations and relating to those relations, by legal entities and natural persons alike who, as subjects in those relations, have certain powers with regard to the property that those relations are based upon, which punishable behaviours cause direct damage to that property and violate or jeopardize the economic relations" (Banović, 2002, p. 28).

In view of the importance, as well as the comlexity of the Economic crime subject-matter, this paper will discuss Smuggling and Illegal trade as very widespread forms of this kind of criminality. The research will include a criminological overview and analysis of this subject-matter, a normative analysis of the eponymous criminal acts, as well as an analysis of the presence of the criminal acts of Illegal trade and Smuggling in relation to total criminality in Serbia.

2. A criminological view of Smuggling and Illegal trade as forms of Economic crime

According to Bošković and Marković (2015), "the concepts of Smuggling and Illegal trade stem from expressions which signify the so-called grey economy phenomenon, which stands for an irregular economic market, which is however not strictly autonomous, participating in segments of regular activity forms. Being interconnected, the courses of their further development are subject to certain rules. At the beginning, illegal practices in the economic and financial-operations market are widespread, until there is a critical mass of sufficient ("initial") capital accumulation, after which business is conducted partly legally, and partly illegally. In this way grey economy appears as a parallel economy, and organized crime as a kind of significant and influential corporational organization of business and influence on the economic trends of the market in which it is present" (p. 225).

According to the definition of Nikolić et al. (2006), grey economy represents:

- "the economic activity of individual legal entities and natural persons over which the state has no control;
- a parallel existence of regular and irregular unlawful economic activity;
- acquisition of benefits for individuals and firms in the form of evasion of the payment of taxes, contributions, customs duties, etc.;
- causing damage to the state and individuals who operate legally;
- a wide range of irregularities concerning the smuggling of goods, running, non-payment of stipulated levies to the state, etc." (p. 161).

Based on the formal-legal criterion, grey economy may be defined as "a permitted form of economic activity, which however does not take place in the framework of the applicable formal-legal regulations for that form of activity. Namely, it is an activity which is economically legitimate, but illegal in terms of law" (Tomaš, 2010, p. 33). In addition, „grey economy actors may decide to carry out a legal activity in a clandestine form for different reasons. The four most common reasons are quoted in theory: 1. Evasion of payment of value-added tax or any other tax; 2. Evasion of payment of insurance contributions; 3. Avoidance of application of stipulated standards (minimum wages, maximum working hours, safety at work etc.); 4. Avoidance of implementation of stipulated administrative procedures (submitting statistical business reports)" (Tomaš, 2010, p. 33).

In this context Madžar (2013) states that "tendency towards grey economy does not only represent a consequence of citizens' unscrupulousness. On the contrary, in case of irrational use of budget funds, as well as an inadequate and poor supply of public services and public commodities, grows a society's inclination towards grey economy. In addition, in case of a state's inefficiency in resolving economic and social problems, citizens' inclination towards engaging in grey economy also grows. Eventually, with the existence of negligible or sporadic sanctions for carrying out activities in the grey economy area, and with corruption being rife on different levels of power, grey economy gradually starts encroaching on all sectors of society. As a result, with time, it develops into a more lucrative form of business dealing compared to legal economy" (pp. 61–62). Thus, Šikman (2013) concludes that "in many countries in transition, and in our country as such, grey economy is a significant obstacle to the development of a powerful entrepreneurial sector, in particular for building a functional market economy" (p. 64).

Smuggling is characterized by the fact that the goods in question are "subject to customs supervision, that they are transported across the customs line circumventing customs supervision measures. Most often the goods being smuggled are intended for illegal trade" (Matijević & Marković, 2013, p. 401).

As Aleksić and Milovanović (1991) point out, "smuggling is illegal carriage of goods of higher value across a state border in an organized way, and in the form of occupation of individuals or organized groups of professional perpetrators of criminal acts. Smuggling consists in bringing goods of domestic or foreign origin in and out across a state border without customs control" (p. 115).

Smuggling and Illegal trade in contemporary international conditions make possible "in the conditions of fast communications and the possibility

of clandestine transactions of international criminal organizations, the realization of large sums of money and other valuables acquired through the sale and resale of various kinds of goods: narcotics, weapons, alcoholic drinks, art works, precious metals and diamonds, nuclear technologies, biohazardous waste and raw materials, trafficking in persons and human body parts, rare and protected animals and plants" (Bošković & Marković, 2015, p. 225).

Analyzing smuggling, Nicević and Ivanović (2012) point out that "Smuggling as a form of action of organized (transnational) criminal groups belongs in the field of Economic crime and consists in organized carriage of goods of domestic or foreign origin in and out across a state border, avoiding customs supervision measures. In literature, this form of criminality is also termed "running", "black market", "contraband", etc., and depending on the kind of goods, or the object of smuggling, we can distinguish between the following: the smuggling of weapons and ammunition, the smuggling of narcotics, the smuggling of cultural heritage, the smuggling of technology products, the smuggling of consumer goods, the smuggling of nuclear and other hazardous waste, the smuggling of precious metals etc." (p. 93–94).

The "grey economy" concept was the basis for the development of the concept of illicit trade, and the criminological term of illegal trade. This concept "signifies every illegitimate activity aimed at acquiring economic benefits which cause financial and other damage primarily to the state, as well as other subjects doing business in compliance with regulations" (Bošković & Marković, 2015, pp. 225–226). As Matijević and Marković (2013) point out, „objects of smuggling most often found in crime investigation practice are consumer goods, money, valuables, motor vehicles, cultural goods, weapons, ammunition and drugs" (p. 402).

Persons engaged in smuggling "pay attention to the market situation, i.e. the demand for and deficiency of specific goods, their main intention being to obtain property gain by selling the smuggled goods. Familiarity with the market situation, i.e. the effect of the laws of supply and demand relating to particular goods, is a fact which must not be ignored in the performance of activities of customs authorities and law enforcement authorities in the detection of goods transported across the customs line without customs supervision" (Bošković, 2005, p. 233).

As Bošković (2005) points out further on, "the conveyance of goods across the customs line without customs supervision is constantly being perfected by the perpetrators, so that there is the occurrence of new forms of smuggling which involve an organized activity across a broader space of one or more countries, with marked professionalism of the perpetrators and a perpetual

tendency towards internationalization. The perpetrators of those criminal acts plan their criminal activities in detail based on previously screening the market, collecting important facts and verified vital information, and in realizing their activity apply up-to-date technological devices and corresponding scientific and technological achievements" (Bošković, 2005, p. 234).

3. The criminal act of Illegal Trade

Article 235 of the Criminal Code (2005) stipulates sanctions for the criminal act of Illegal Trade, as follows:

„(1) Those who, without having a permission for trade, obtain goods or other objects of higher value for the purpose of sale, or who, in an unauthorized way and on a large scale, deal with trade or mediation in trade, or deal with the representation of organizations in domestic or foreign trade in goods and services, shall be punished by a fine or imprisonment of up to two years.

(2) Those who deal with trade in the goods the manufacture of which they have organized without a licence, shall be punished by inprisonment from three months to three years.

(3) The punishment from the previous paragraph shall also apply to those who, in an unauthorized manner, sell, buy, or conduct the exchange of any goods or objects trade in which is prohibited or restricted.

(4) If the perpetrator of the acts referred to in the previous three paragraghs organized a network of resellers or intermediaries, or obtained a property gain exceeding the amount of four hundred fifty thousand RSD, they shall be punished by imprisonment in the duration of six months to five years.

(5) Any goods or objects of illegal trade shall be confiscated".

According to the legal definition, the basic form of the criminal act is committed by a person who, with criminal intent, and without having an authorization for trade, commits one of the following alternatively specified actions:

1) procures goods or other objects of higher value for the purpose of sale,
2) deals with trade or mediation in trade in an unauthorized manner and on a larger scale,
3) represents an organization in the domestic or foreign trade of goods and services.

Any person who commits any one of the alternatively specified actions may be a perpetrator of a criminal act.

The action of committing the basic form of the act consists in acting (the procurement of goods or other objects, unauthorized mediation, representation of an organization in the domestic or foreign trade of goods and services).

The punishment stipulated by the legislator for the basic form of the criminal act is a monetary fine or, alternatively, a prison sentence of up to two years.

Provisions of paragraphs 2 and 3 of this article of the Criminal Code specify two distinct forms of the act.

Namely, a prison sentence of three months to three years shall apply to anyone who deals with the sale of goods the manufacture of which they have organized without authorization (the first distinct form), and anyone who carries out unauthorized sale, purchase or exchange of goods or objects trade in which is prohibited or restricted (the second distinct form).

The perpetrator of both distinct forms can be any person who, with criminal intent and in an unauthorized manner, organizes the manufacture of the goods and sells those goods in the same unauthorized way, and who with criminal intent and without authorization buys, sells or conducts an exchange of goods or objects trade in which is prohibited or restricted.

According to Čejović and Kulić (2014), "as opposed to the basic form, which only involves unauthorized trade in goods, or objects that may be manufactured by anyone, the organizer of trade in the first distinct form is the person who sells the manufactured goods. In this case one and the same person organizes both the unauthorized manufacture and sale of the goods. Consequently, the brunt of incrimination with this criminal act lies with the unauthorized organization of manufacture of the goods which are then sold, in the same unauthorized way. The organization of manufacture, as the action of this criminal act, refers to any activity which enables the manufacture of goods intended for sale" (pp. 475–476).

Provisions of paragraph 4 of this article of the Criminal Code define a more serious form of the act. Namely, a more serious form of the act exists if the perpetrator of the basic and both distinct forms of the act organized a network of resellers or intermediaries, or obtained property gain exceeding the amount of four hundred fifty thousand RSD. In case of existence of this more serious form of the act, the perpetrator shall be punished by prison of six months to five years.

Paragraph 5 of article 235 of the Criminal Code stipulates the measure of confiscation of goods and objects of unauthorized trade.

As stated by Čejović and Kulić (2014) further on, "the very name of the criminal act, which signifies dealing with trade, points to the conclusion that this is a case of a collective criminal act in the form of occupation. In view of

that, we can pose the question of whether this criminal act only exists when the action of the criminal act has been committed more than once, or even when it has been committed only once. Although there are different opinions, the prevailing interpretation is that one instance of the action is sufficient, if any other circumstances suggest that the perpetrator has the intention and inclination to repeat the action of the criminal act, i.e. to practise it. The aforesaid refers in equal measure to all forms of the criminal act of illegal trade" (p. 476).

4. The criminal act of Smuggling

Article 236 of the Criminal Code defines the criminal act of Smuggling, in the following way:

1) „ Whoever deals with the conveyance of goods across a customs line avoiding the measures of customs supervision, or whoever, while avoiding customs supervision measures, conveys goods across a customs line armed, in a group or with the use of force or threats, shall be punished by imprisonment of six months to five years and a monetary fine.
2) Whoever deals with the sale, distribution or concealment of uncleared goods, or organizes a network of resellers or intermediaries for the distribution of such goods, shall be punished by imprisonment of one to eight years and a monetary fine.
3) The goods which are the subject of the acts from the previous two points shall be confiscated.
4) A transportation or other vehicle the secret or covert spaces in which are used for the carriage of goods which are the subject of this criminal act, or which is intended for committing the actions of this criminal act, shall be confiscated if the vehicle owner or user knew that, or could have known, or was obliged to know that."

According to the legal definition, the basic form of the criminal act is committed by a person who, with criminal intent, deals with the carriage of goods across a customs line avoiding the measures of customs supervision, as well as a person who, while evading the measures of customs supervision, carries goods across a customs line, at the same time being armed, or acting in a group, or using force or threats with the aim of committing a criminal act.

The perpetrator of a criminal act can be any person who commits any one of the alternatively specified actions.

The action of committing the basic form of the act consists in acting (the conveyance of goods across a customs line, with the perpetrator being either armed, or acting in a group, or using force or threats).

The existence of the act is characterized by the fact that the goods in question are subject to customs supervision, that they are conveyed across a customs line in one of the alternatively specified ways.

It is required "that the goods are conveyed across a border line without customs supervision, regardless of whether this is done in an organized manner or in individual cases, while it is also irrelevant how many times it is done, or what the quantity or value of the goods in question is" (Matijević & Marković, 2013, p. 401).

The punishment laid down by the legislator for the basic form of the criminal act is a prison punishment of six months to five years, with a cumulative monetary fine pronouncement.

Provisions of paragraph 2 of this article of the Criminal Code stipulate a more serious form of the act.

A more serious form of the act exists if the perpetrator deals with the sale, distribution or concealment of uncleared goods, or organizes a network of resellers or intermediaries for the distribution of such goods. In case of existence of this more serious form of the act, the perpetrator shall be punished by imprisonment of one to eight years and a monetary fine.

Paragraph 3 of article 236 of the Criminal Code stipulates the measure of confiscation of the goods which are the subject of the basic or more serious forms of the criminal act. Paragraph 4 of the same article stipulates that a transportation or other vehicle the secret or covert spaces in which are used for the carriage of goods which are the subject of this criminal act, or which is intended for committing the actions of this criminal act, shall be confiscated if the vehicle owner or user knew that, or could have known, or was obliged to know that.

In that sense, "the carriage of smuggled goods across state borders makes use of all kinds of transport vehicles. In this way smuggled goods are transported with other goods passing across borders legally, with the required supporting documentation, while there is also a frequent use of structural gaps, or special "bunkers" being made for the concealment of goods. The goods being smuggled are commonly accompanied by the so-called followers, who have the task to secure the entire transport, to organize any goods reloading, and prevent any suprises, either from competitors or from control authorities" (Matijević & Marković, 2013, p. 402).

5. The incidence of the criminal acts of Illegal Trade and Smuggling compared to the total criminality in Serbia

Under this subtitle we shall analyze the relation of the persons reported, charged with and convicted of the criminal act, to the total number of reported, accused and convicted adult persons at the Republic of Serbia level, for 2019.

In this paper, we applied the analytic method in theoretical content analysis, the deductive method in drawing the conclusions, and a basic quantitative data analysis in the part dealing with research. The research in the paper is based on the official data of the Statistical Office of the Republic of Serbia.

Table 1. The relation of the adult persons reported, charged with and convicted, by the criminal act, to the total number of reported, accused and convicted adult persons at the Republic of Serbia level, for 2019

	Reported adult persons	Accused adult persons	Convicted adult persons
Republic of Serbia – IN TOTAL	92,797	32,360	28,112
Criminal acts against economy	2,461	1,345	1,008
Illegal Trade	261	137	125
Smuggling	14	18	17

Source: Republički zavod za statistiku (2020). *Bilten – Punoletni učinioci krivičnih dela u Republici Srbiji – 2019 [Bulletin - Adult perpetrators of crimes in the Republic of Serbia - 2019].* Beograd: Republički zavod za statistiku.

The data presented in the table leads to the conclusion that the share of individual criminal acts of Illegal Trade and Smuggling with respect to the criminal information filed, indictments brought and condemnatory judgements reached is extremely modest compared to the total number of the criminal information filed, indictments brought and condemnatory judgements reached for the group of criminal acts against economy, and to the overall values presented for the aforesaid categories at the level of Serbia. If we analyze more closely the percentages of shares of the aforesaid criminal acts, e.g. in the category of reported adults, we can conclude that (in relation to the presented numerical data) the share of criminal acts of Illegal Trade in the criminal acts against economy is 10.6% while the share of the criminal acts of Smuggling is 0.6%, and that the share of the criminal acts of Illegal Trade in overall criminality in Serbia amounts to 0.3%, while the share of the criminal acts of Smuggling is 0.01%. This in no way means that the criminal acts of Illegal Trade and Smuggling, as very significant acts in the scope of

Organized crime, are not carried out on a larger scale in the Serbia territory. From the point of view of criminological analysis of the incidence of specific offences in a particular area, this points to the conclusion that one part (most often the prevailing part) of the criminal acts remains undetected, or unregistered, i.e. in the sphere of dark numbers, which in turn implies the need for a society facing these problems to better focus on both the phenomenology, and the etiology of particular criminal acts.

6. Conclusion

Economic crime is a very complex criminological and legal category. Modern economic crime is characterized by a variety of manifestations which tend to become increasingly better organized, which, among other things, makes their detection, the collection of evidence material and the criminal prosecution of the perpetrators of the relevant criminal acts in this field much more difficult.

In view of the importance, as well as the comlexity of the Economic crime subject-matter, this paper has discussed Smuggling and Illegal Trade as highly widespread forms of this kind of crime. The research included a criminological review and analysis of the aforementioned issues, a normative analysis of the eponymous criminal acts, as well as an analysis of the presence of the adult persons reported, charged with and convicted of the abovementioned criminal acts in the total values for the group of criminal acts against economy, and in the total numbers in the aforesaid categories at the level of Serbia, for 2019.

The conclusion is that the share of individual criminal acts of Illegal Trade and Smuggling with respect to the criminal information filed, indictments brought and condemnatory judgements reached is extremely modest compared to the total number of the criminal information filed, indictments brought and condemnatory judgements reached for the group of criminal acts against economy, and to the overall values presented for the aforesaid categories at the level of Serbia, which from the point of view of criminological analysis of the incidence of specific offences in this particular area points to the conclusion that a prevailing part of the criminal acts, which seem at first glance to be present on a modest scale, remain undetected, or unregistered, i.e. in the sphere of dark numbers.

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KRIJUMČARENJE I NEDOZVOLJENA TRGOVINA KAO OBLICI PRIVREDNOG KRIMINALITETA

REZIME: Privredni kriminalitet je veoma složena kriminološka i pravna kategorija. Savremeni privredni kriminalitet karakteriše mnoštvo pojavnih oblika koji teže ka sve većoj organizovanosti, što, između ostalog, otežava njihovo otkrivanje, prikupljanje dokaznog materijala i krivično gonjenje učinilaca. Imajući u vidu značaj, ali i kompleksnost materije privrednog kriminaliteta, u radu je bilo reči o krijumčarenju i nedozvoljenoj trgovini. Istraživanje je uključilo kriminološku analizu privrednog kriminaliteta, normativnu analizu pomenutih krivičnih dela, kao i analizu zastupljenosti prijavljenih, optuženih i osuđenih punoletnih lica za navedena krivična dela u ukupnim vrednostima za grupu krivičnih dela protiv privrede i na nivou Srbije, a za 2019. godinu.

Ključne reči*: privredni kriminalitet, krijumčarenje, nedozvoljena trgovina, krivično pravo, Republika Srbija.*

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LAWYER CONFIDENTIALITY

ABSTRACT: The role of the lawyer is characterized by a focus on counseling, advocacy and conciliation. A lawyer advises a client on legal issues, considers the possibilities of resolving the dispute amicably and certainly advocates in a legal proceedings if this occurs. In order the previously mentioned activities between the client and lawyer to be achieved, it is necessary to establish a mutual connection. Talking about a lawyer`s capability of fulfilling the role of a counsel and client's representative, he/she must be independent in his/her work, especially having professional independence in relation to courts, state bodies, but also in relation to his/her own interests. It is this independence that represents a significant foundation in gaining trust in the client-lawyer relationship. Achieving trust is not easy, although it is a priori expected. In order to gain trust and to be able to access an adequate representation in a legal proceedings, the lawyer's obligation is to keep the lawyer's secret and not to disclose confidential information. A lawyer's secret can be considered from several aspects, from the moral, contractual, ethical... In this research, certain important theoretical frameworks will be considered, with the focus on presenting and reviewing the international, primarily European legislative regulation of the issue of legal secrecy. This paper will certainly include the aspect of domestic legislation too. In addition to the above, some important positions of the European Court of Human Rights will be pointed out. Before presenting the conclusions emerged from this research, a special attention will be paid to the circumstances when a lawyer can reveal a secret.

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1. Introduction

Trust!? You killed, you stole, you just defended yourself, you thought it was your right, you did something for which you are convicted and threatened with imprisonment or a high fine. A person assigned to you on duty, or found online on the first page of a search engine or possibly on a recommendation, called a lawyer, you have to trust… to give him your trust. To tell him the truth that will incriminate you morally or legally. Is it a straw of salvation or is it some form of dogma?

Trust is a two-way relationship that is gained over time, essentially with close people or people from a relatively wider circle of friends, business associates, neighbors… With greater social distance, honesty and transparency play a dominant role in building trust that is probably easier to collapse than to build.

Is it possible to establish trust in the client-lawyer relationship on the basis of "one" call to the law office or on the basis of "one" meeting with an "instant" lawyer?

Based on the experiences from the penalty practice, we can note various problems. Thus, it is not uncommon for a convict to be on the execution of a security measure of obligatory treatment of drug addicts, and to deny any history of drug abuse to educators after entering the execution of a prison sentence. Although this seems illogical or untrue, it is not uncommon, nor uncommon, for convicts to report that their lawyers teach them to emphasize drug addiction in court. Only such a statement, according to the statements of the convicts, usually carries a more favorable attitude of the court and a milder punishment (Dragojlović & Bingulac, 2019, p. 298). Is this a modality of defense with a certain degree of damage towards the perpetrator of the crime, or does it enter the zone of abuse of trust, or is it just pure Machiavellianism.

If an example is also given from the practice in which the lawyer is accused of keeping for himself the amount of close to 1.4 million dinars, which was paid to him by the insurance company for the parties whose interests he represented before the court. More precisely, there is a suspicion that the lawyer abused the authority given to him by three women and misappropriated the money, claiming that it was not paid (Radio televizija Vojvodine, 2015).

In order for a lawyer to be able to fulfill the role of counsel and client's representative, he must be independent in his work, especially he must have

professional independence in relation to courts, state bodies, but also in relation to his own interests. It is this independence that represents a significant foundation in gaining trust in the client-lawyer relationship.

2. International principles relating to lawyer confidentiality

Modern practice of law is based on confidentiality, non-existence of conflict of interestand independence. Council of Europe regarding the development of guidelines aimed at improving the efficiency and effectiveness of national legal aid schemes in the areas of civil and administrative law. For the 2021 edition of the EU Justice Scoreboard, the Committee collaborated with the European Commission by gathering data on the level of court fees, as well as on financial eligibility criteria for legal aid in civil and commercial law across EU Member States,based on the mentioned three principles (Cuomo, 2020, p. 25).

Most legal systems share the common understanding that if the right to protection of confidentiality is denied, a criminal or misdemeanor suspect may be denied access to legal advice and justice. This denial can also be disabling communication with a lawyer or disabling confidential communication with a lawyer or disclosing his communication with a lawyer (Council of Bars and Law Societies of Europe, 2020, p. 10).

Professional secrecy and legal professional privilege are thus seen as instruments by which access to justice and the maintenance of the rule of law can be achieved. Indeed, the ECtHR has repeatedly linked the respect for legal professional privilege and professional secrecy to the observance of Articles 6 and 8 of the ECHR. First, the Court considered that "an accused's right to communicate with his advocate out of hearing of a third person is part of the basic requirements of a fair trial in a democratic society and follows from Article 6 para. 3 (c) of the Convention" (Council of Bars and Law Societies of Europe, 2020, p. 10). Cases are known in ECtHR practice are: S. v. Switzerland (12629/87), 1991, §48, also Domenichini v. Italy (15943/90), 1996, §39, also Öcalan v. Turkey (46221/99), 2005, §1333, also Moiseyev v. Russia (62936/00), 2008, §209 and ECtHR, Campbell v. the United Kingdom (13590/88), 1992, §§ 44-48. Furthermore, the ECtHR in case Michaud v. France (12323/11), 2012, §117-118 stated that "the right of everyone to a fair trial" is dependent upon the "relationship of trust between *the lawyer and the client*".

The ECtHR has repeatedly emphasized that undermining professional secrecy or legal professional privilege may violate Article 8, which protects

the right to respect for private and family life, by indicating the need to "provide enhanced protection through exchanges between lawyers and their clients"(Guide on Article 8 of the European Convention on Human Rights, 2020, p. 117).

The necessity of having a confidential conversation between the client and the lawyer can be seen in "the fact that lawyers are assigned a fundamental role in a democratic society, that of defending litigants. Yet they cannot carry out this essential task if they are unable to guarantee to those they are defending that their exchanges will remain confidential" (Council of Bars and Law Societies of Europe, 2020, p. 10).

In Article 4 of the Right of Access to a Lawyer Directive (Directive 2013/48/EU) provides: "Member States shall respect the confidentiality of communication between suspects or accused persons and their lawyer in the exercise of the right of access to a lawyer provided for under this Directive. Such communication shall include meetings, correspondence, telephone conversations and other forms of communication permitted under national law."

It is important to mention the Council of Europe Recommendation (NoR200021) of 25 October 2000. concerning the freedom of exercise of the profession of lawyer in Europe which provides that "All measures should be taken to ensure the respect of confidentiality of the lawyer-client relationship. Exceptions to this principle should be allowed only if compatible with the Rule of Law." (Principle I, paragraph 6) and that "Professional secrecy should be respected by lawyers in accordance with internal laws, regulations and professional standards. Any violation of this secrecy, without the consent of the client, should be subject to appropriate sanctions" (Principle III, paragraph 2).

Having in mind everything that has been pointed out so far, the question arises here, in what way does a lawyer physically protect confidential data.

Legislation should not prevent lawyers from adequately protecting the confidentiality of their communications with clients and should not give state agencies or law enforcement authorities privileged access to encrypted data. Encryption method may be through some encryption software (Council of Bars and Law Societies of Europe, 2020, p. 20). Lawyers keep sensitive information (from business secrets to details of private life) that their clients have provided in confidence and may not disclose it. This makes lawyers particularly vulnerable to illegal attacks e.g. private hackers and requires appropriate cryptographic protection if the data is in electronic form. Decryption may be only permissible if it is legally defined and any decision allowing the decryption of protected lawyer-client communications must be granted by an independent judge, on a case-by-case basis, and following due process

(Coreprinciples of the legal profession, 2020, p. 20). As a reminder, the right to data protection is protected by Article 8 of the ECHR, Article 8 of the Charter of Fundamental Rights in the EU, as well as the 1981 Data Protection Convention and the current 2008 Framework Decision on Data Protection.

In circumstances where it is necessary to issue an order to intercept the lawyer-client communication, supervision is required at all stages of the supervision procedure. Also, such a court decision must be made on a case-by-case basis. Any lawfully intercepted material should be used solely for the purpose for which the authorisation of the oversight body was granted.

Any intercepted material obtained without judicial authorisation should be ruled inadmissible in a court of law.

In order to avoid the risk that the state may make use of lawfully intercepted material in shaping and informing its tactics and approach to legal proceedings whilst keeping the defence in ignorance of that material (and, hence, unable to expose it to judicial scrutiny) material which has been lawfully obtained should both be disclosed to the lawyers acting for the party in respect of whose confidential or privileged data or communications surveillance has taken place and be admissible as evidence in court (Coreprinciples of the legal profession, 2020, p. 25).

Confidentiality rules enable clients to obtain the benefit of legal advice without having to bear the cost of disclosing information they would prefer to remain secret. The lawyers advice is only valuable if it remains secret, because public disclosure by the lawyers would increase, not decrease, the probability of an audit. And if an audit does occur, confidentiality is still valuable because it decreases the probability of a more severe sanction, which might be levied if the client's deliberate attempt to evade compliance were revealed. Confidentiality rules, therefore, increase the value of legal advice (Fischel, 1998, p. 5).

In Australia criminal law, lawyer confidentiality is called "client legal privilege" because the privilege belongs to the client, not the lawyer. A lawyer may only disclose privileged communications if clearly instructed to do so by their client. The proper administration of justice requires that clients are able to communicate freely and frankly with their lawyer, without fear of disclosing any information relevant to the legal advice they are seeking. It is well understood that, in the absence of the privilege, legal proceedings may be delayed or even miscarried as lawyers may not be able to properly represent their client, or bring relevant matters to the attention of the court (The Law Council of Australia, 2020).

3. Domestic principles relating to the confidentiality of lawyers

Hvaing lawyer confidentiality in domestic legislation is one of the basic principles of advocacy. The lawyer keeps the its confidentiality until the person who entrusted him with the secret releases him from keeping it. A confidentiality is everything that a lawyer learns when performing legal aid, and that is entrusted to him as a client's lawyer. All deposits entrusted to a law firm have the same treatment.

In the domestic legal system, lawyer's confidentiality is primarily regulated in the Law on Advocacy, and then elaborated more broadly in the Code of Professional Ethics of Lawyers.

In the Law on Advocacy (2012) Article 20 stipulates that a lawyer is obliged, in accordance with the statute of the Bar Association and the Code, to keep it a professional secret and to ensure that the persons employed in his law office do so, everything that the client or his authorized representative has entrusted to him or what he learned or obtained in another case in which he provides legal assistance, in preparation, during and after the termination of representation. It is important to note that the obligation to maintain legal secrecy is not limited in time. The manner of keeping a lawyer's secret and acting in connection with a lawyer's secret are regulated by the statute of the Bar Association and the Code.

The Code of Professional Ethics for Lawyers (2020) defines legal secrecy in such a way that it represents everything that the client, or a person authorized by the client, has entrusted to a lawyer, or that the lawyer, in the case in which he represents, otherwise learned or obtained, in preparation, during and after the termination of representation. The obligation to maintain secrecy applies equally to: data, documents (files, objects, documents, electronic, audio or video, recordings and recordings) and deposits that are communicated, displayed or handed over to a lawyer in connection with representation, regardless of whether they are corrected and deposits are located in a law office, or are, by order or under the supervision of a lawyer, temporarily placed elsewhere; confidential information learned by the lawyer from the person whose representation he did not accept (the party), or from the opposing party, who, before initiating the procedure before the competent authority, addressed him for the purpose of settlement or mediation.

The lawyer keeps the secret by not disclosing or transmitting confidential data, and makes confidential documents inaccessible to third parties. The lawyer keeps the secret without a special request from the client, based on a conscientious assessment of all the circumstances that may lead to the conclusion

of what the client wants or what is in his interest to remain confidential. Well-known, publicly published or recorded in public books, the lawyer keeps secret if the client specifically requested it, or if the presentation or transmission of these facts may harm the reputation, honor, privacy or other interests of the client, his relatives or heirs.

In order to maintain secrecy, a lawyer should: to warn and personally oblige his associates, officials, trainees and all persons he engages during the representation, to keep legal secrecy and to the consequences of violating this obligation; to act with reasonable caution in the transmission of confidential content by mail, telephone, fax, electronic means, or in any other indirect way, and to minimize the possibility of the secret being revealed, either accidentally or by misuse of means of communication; to warn the client of this danger and of the risk of disclosing confidential information under these conditions in circumstances where he knows or has reasonable grounds to suspect that his conversations with the client are being listened to or eavesdropped on, especially in the police, prison or detention; to personally, or through a trusted trustee, supervise the making of transcripts, copies or recordings of confidential documents; to take care of the documents in an appropriate manner; and finally to warn the confidentiality of the content to the person to whom he is authorized to transmit such content.

Then, the obligation to maintain secrecy must also state what the code stipulates that it is not considered a violation of legal secrecy when a lawyer discloses information or makes available documents entrusted to him by a client or a person authorized by the client, to the extent necessary for achieving the purpose of representation.

Then, when a lawyer's secret is invoked before a state body, the lawyer himself assesses whether and which data and documents are the subject of the secret, explaining only the basis from Rule 14 of this Code. It is envisaged that it will be considered a violation of the principle of honesty when a lawyer, under the pretext of maintaining secrecy, refuses to disclose information that is not the subject of secrecy.

Finally, a lawyer who sends a confidential notice to a colleague from another country should clearly state that the notice has such a character, and the recipient is obliged to return such notice without disclosing its content, if he assesses that he would not be able to do so for any reason. to preserve confidentiality.

The Code of Professional Ethics for Lawyers also provides for the disclosure of secrets.A lawyer has the right to reveal a lawyer's secret: when the client or a certain person unquestioningly allows him to do so; when it is

necessary to prevent the commission of an announced criminal offense with a significant social danger; when it is necessary for the defense of the lawyer himself in the proceedings against him upon the report or lawsuit of the client, the person who entrusted the data or documents to the lawyer on behalf of the client, or the person provided for that purpose; when it is necessary to defend the interests and rights of the lawyer himself or his close relatives and associates, if those interests and rights are objectively more important than the content of the secret.

The lawyer is obliged to inform the person to whom the secret refers without delay about the decision to use the right to reveal the secret, whenever the nature of the case and specific circumstances allow it, and moral considerations recommend it. Then, the lawyer is obliged to warn the client of his legal obligation to record and transfer some data to the competent authority in certain legal cases, before the client entrusts them to him. Finally, it should be noted that when revealing a secret, a lawyer should spare the client's personality and interests as much as possible, avoid publicity and not disclose personal data, but only circumstances that are sufficient to prevent or stop the criminal act.

It is necessary to point out the circumstance when the Law Office is searched for the needs of criminal proceedings. Of course, this action is not forbidden.

During the legal regulation of the search of a law office for the purposes of criminal proceedings, two, somewhat opposing interests must be reconciled and balanced: the interest in establishing facts in criminal proceedings, on the one hand, and the interest in protecting trust between a lawyer and a party, on the other. Therefore, the regulations of certain states that regulate criminal proceedings in some cases and / or under certain conditions exclude a lawyer from the duty to testify about what he is obliged to keep as a professional secret, ie prescribe the prohibition of temporary seizure of certain items related to by turning away from the duty to testify (Pisarić, 2019, p. 64).

4. Conclusion

Modern practice of law is based on confidentiality, non-existence of conflict of interest and independence. Most legal systems share the common understanding that if the right to protection of confidentiality is denied, a criminal or misdemeanor suspect may be denied access to legal advice and justice. In order for a lawyer to be able to fulfill the role of counsel and client's representative, he must be independent in his work, especially he must have

professional independence in relation to courts, state bodies, but also in relation to his own interests. It is this independence that represents a significant foundation in gaining trust in the client-lawyer relationship.

Lawyers keep sensitive information from business secrets to details of private life, that their clients have provided in confidence and may not disclose it. This makes lawyers particularly potencial vulnerable to illegal attacks. In the paper itself, we pointed out several positions of the European Court of Human Rights, which relate to the topic of this research. The essentially observed research of the institute of legal secrecy has been considered from both the international and domestic legislative aspect.

The aim of this research is to consider certain theoretical frameworks, but also to point out international legislation, and certainly to show how lawyer confidentiality is envisaged in domestic legislation. The secondary goal of this paper is to create a basis for future research on this issue and to consider specific cases from domestic practice from which a more complete understanding of the issue of legal secrecy in real circumstances could be made.

It was concluded that in the legislative / theoretical sense, the legal secret as one of the most important democratic institutions is well enough regulated starting from the European legislation, but there is room for some additional clarifications. Finally, we reiterate that there is no fair trial without legal confidentiality.

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ADVOKATSKA TAJNA

REZIME: Uloga advokata je okarakterisana sa fokusom na savetovanje, zastupanje i mirenje. Advokat savetuje klijenta o pravnim pitanjima, razmatra mogućnosti rešavanja spora na miran način i svakako, zastupa ga u pravnom postupku ako do toga dođe. Da bi se postiglo pomenuto između klijenta i advokata neophodno je uspostaviti međusobno poverenje. Da bi

advokat mogao da ispuni ulogu savetnika i zastupnika klijenta, on mora biti nezavisan u svom radu, posebno mora da ima profesionalnu nezavisnost u odnosu na sudove, državne organe ali i u odnosu na sopstvene interese. Upravo ova nezavisnost predstavlja značajan temelj u sticanju poverenja na relaciji klijent – advokat. Postizanje poverenja nije jednostavno iako se to apriori očekuje. Sa ciljem ostvarivanja poverenja i da bi se moglo pristupiti adekvatnom zastupanju u pravnom postupku, obaveza advokata je da čuva advokatsku tajnu i da ne otrkiva poverljive informacije. Advokatska tajna može se razmatrati sa više aspekata, sa moralnog, ugovornog, etičkog, i dr. U ovom istraživanju razmotriće se pojedini teorijski okviri koji su od značaja, s tim da će fokus biti na prikazu i sagledavanju međunarodnog, prvenstveno evropskog zakonodavnog uređenja pitanja advokatske tajne, a svakako razmotriće se tema ovog rada i sa aspekta domaćeg zakonodavstva. Pored pomenutog ukazaće se i na pojedine značajnije stavove Evropskog suda za ljudska prava. Pre iznošenja zaključaka koji su proistekli iz ovog istraživanja, posebna pažnja će biti ukazana okolnostima kada advokat može da otkrije tajnu.

***Ključne reči*:** *advokatska tajna, poverenje klijenata, pravično suđenje, međunarodni principi, sudska praksa.*

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REGULATION OF RESTRICTIVE AGREEMENTS IN REPUBLIC OF SERBIA WITH A REFERENCE TO THE EUROPEAN UNION LAW

ABSTRACT: This paper explores the questions regarding regulations of restrictive agreements in Republic of Serbia as well as in the European Union. Moreover, it has a concept of a competition explained in order to make the importance of the exemption of agreements with the competition infringement noticed. The measures and requirements for protection of competition are presented as well. The aim of the paper is to present the importance of restrictive agreements, and to explain if the market should be protected only from an individual agreement or from all restrictive agreements. Moreover, the point whether the competition is protected from all infringements or just from some of them is explored. From all this stated, it can be concluded that there are big discrepancies in regulations against competition infringement in legal regulations of Republic of Serbia in comparison with regulations of the European Union.

***Keywords*:** *Restrictive arrangements, Competition infringement, Measures for protection of Competition, Competition in the European Union.*

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1. Introduction

Taking in consideration regulations of restrictive agreements, we come up to a conclusion that this can be easily referred to as a "grey" area of legal regulations. Even though it is known that every legal norm has a specific political goal, which strives to be reached, and which naturally cannot be satisfying for all but rather a few, a real dilemma exists within regulations against competition infringement in restrictive agreements. Is it better to provide protection for large companieswhich participate in developing of the market and citizens' standard of living, or to help consumers get the best deal for their money, or to allow a country to create conditions for non-competitive companies to enter and be present on the market by providing subventions?

This issue of competition infringement is not a simple one, and it should be dealt with carefully and precisely. The problem of inadequate protection of competition cannot be seen fromthe damage made (lat. damnum emergens), but rather from the loss of profits (lat. lucrum cessans) which is more difficult to prove.

2. The concept of restrictive agreements

2.1. The concept of competition

Explaining the concepts that can destabilize or impinge the market, we should firstly explore the concept of competition. Competition is not a concept that has been always present, but rather something that has been mostly developed in the last fifty years. Before the mentioned time, competition was not present in all countries in the world, and it surly was not present in all branches of industry. Due to underdeveloped industry and country's interventionism rivalry was not emphasized even in the countries where it existed. Country's interventionism was more harmful than cartel activity.

Nowadays, it is very easy not to notice the number of changes that happened in the developed countries since the lack of competition is only present in underdeveloped countries. Deterrence of cartels and powerful business groups, as well as strengthening of competition have been closely connected with German and Japanese magnificent economic growth after the Second World War. The most competitive branches of Japanese industry were developed during the intensive competition in the domestic market, for example in consumer electronics and automotive industries. However, the development of other parts of Japanese industrylike finance, chemicals and retail are still undeveloped due to the lack of competition.

Even in the United States of America, which showed great tendency towards competition, some big parts of the economy were regulated to a big extent. Telecommunication sector, traffic sector, energy sector and the others show that competition can lead to innovations and big progress changes (Porter, 2008, p. 7).

It can be also concluded that competition is neithergood nor bad in principle. There is always a reason for intense competition in certain branches of industry and also a reason for profit "sharing".

2.2. The concept of competition infringement

Being already stated, competition has a big impact on the development of the market, as well as on the raising of the standard of living, and that is why a country should protect every behavior that badly affects competition in any market. This section of the paper explores how a country protects the market, especially consumers from competition infringement.

In order to make this conclusion, we should firstly explain the concept of competition infringement. Every negotiation among participants in the market which can result in restriction, distortion or prevention of competition is considered to be competition infringement.

Firstly, restriction can either stand for an inability of participants to access the market, or when the ability to access the market is hindered, in order to obtain monopoly.

Secondly, distortion of competition represents destroying of already established competition in order to obtain monopoly. Thirdly, prevention of competition stands for making competition more complicated also in order to obtain monopoly. It can be noticed that these three terms have the similar effect and also the identical goal.However, the most important segment of the definition of competition infringement is not just restriction, distortion and prevention of competition but the amount of infringement itself.

Conflicts of rivals in the market are a daily thing, where each rival tends to secure a better position in the market. These conflicts naturally lead to restriction, distortion and prevention of competition in order to obtain monopoly. However, a country should not intervene to a high degree and should not impose a rigid system which can possibly result in prevention of competition. A country should protect from some big changes in competition and only when those changes can negatively affect the market.

Apart from restrictions against competition infringement, there are also restrictions from which the market benefits and which can be also imposed by a country.

Namely, restrictions, distortions and preventions can be seen as negative effects only when the goal is to obtain monopoly. In addition, the following question raises, what if competition infringement results in the improvement in production, distribution and decrease in cost of either innovation or technical and technological progress or the improvement of the position of consumers?

Since restrictive agreements are in the "grey" area of regulations, thus being like that they cannot be regulated beforehand, which means that it is allowed to certain experts to think, investigate and decide on the goal of an agreement and the possible effects it may have in the market.

2.3. The concept of restrictive agreements

The concept is legally regulated in a general way, which is also the case with the Law on Protection of Competition (2009), (hereinafter: The Law) in the Republic of Serbia.

Namely, in the Law this concept is represented as an agreement between participants in the market of the Republic of Serbia whose main goal or consequence is competition infringement throughrestrictions, distortions or preventions.

The concept of restrictive agreements is not precisely defined since restrictive agreements do not include the following agreements: an agreement that is excluded by the government and a restrictive agreement excluded by a decision made by Commission for Protection of Competition (hereinafter: theCommission) and agreements of minor importance which are regulated byArticle 14 of the Law.

Being defined in this manner, restrictive agreements are not represented properly since they are complex agreements without all restrictive norms included.They are usually agreements that possess some restrictive norms, and some norms that are in accordance with the positive law of the Republic of Serbia. Due to these cases, a new question is raised- should all restrictive agreements need to bedeclared null and void, or kept alive in accordance with favor contractus principle whenever possible?

In comparison to restrictive "agreements", there are also cartels which stand for associations of the participants in the market, and by being like that they do not have any individual agreement. Moreover, can concerted practices of manipulation of prices and distribution restriction among participants that are not direct competitorsin the market be considered as "agreements"?

Namely, recent trends that exist worldwide give a precisely determined sections of the agreements and a set of behavior which are considered restrictive. Being like that, if it does not affect the competition, the whole restrictive agreement will not be cancelled.

I personally think that this doctrine should be explored more thoroughly in Serbian law, since the existing regulations issued by the government are in accordance with all previously mentioned, but only in respect of prohibitions. Parts of the agreements which are referred to as completely restrictive are not precisely regulated.

I would like to emphasize that the concept of competition infringement has to be precisely defined, and the protection of competition has to be provided too. At the moment, new participants in the market do not seem to be well informed either about the market they enter or the things that are allowed and prohibited.On one hand, I think that this results in low investment in the market of production and services. On the other hand, there is a market expansion of buying and renting of real estates. If the legal protection improves, there will be a considerable potential for growth, in comparison with a few new buildings for a population that emigrates.

3. Restrictive agreements in the Republic of Serbia

3.1. Regulations of restrictive agreements in the Republic of Serbia

The existing law on Protection of Competition was passed on November 1, 2009, and it only underwent one change.The changed was made in Article 10stating: "Restrictive agreements are agreements between undertakings which as their purpose or effect have a significant restriction, distortion, or prevention of competition in the territory of the Republic of Serbia."

It can be concluded from the definition above, that restrictive agreements are agreements that exist between participants either in a written or spoken form, and that they have a goal that can be directly or indirectly stated, as well as that they provide an immense restriction, distortion or prevention of competition in the market of the Republic of Serbia. This means that restrictive agreements do not only affect interests of an individual or a group of individuals, but also interests of a group of numerous parties in the market or consumers, or a public interest in general.

In addition, due to the "grey" area of restrictive agreements, the Commission may exempt some restrictive agreements from prohibition in the Republic of Serbia. However, a general decision, which is in force for all the

restrictive agreements, can be enacted, and a restrictive agreement like that cannot be withdrawn by the Commission either when it infringes the competition or when it is exempted from prohibition. These types of the restrictive agreements are given through regulations by the government of the Republic of Serbia.

According to Article 14 of the Law, agreements of minor importance shall be allowed, even though apart from the mentioned elements restrictive agreements shall possess a restriction of greater importance as well.

3.2. The proceeding of restrictive agreements disclosing in the Republic of Serbia

According to Article 23 of the Law, the Council numbers four members of the Commission and the president of the Commission. The president of the Commission and the Council member are elected from a number of experts in the field of law and economics with at least ten years of relevant professional experience. They are also supposed to have significant and recognized work or practice in the relevant field, especially in the field of protection of competition and the European Law, and they are supposed to be objective and impartial. The decision is made by the absolute majority in the Council. This way of deciding protects members of the Council even when they do not want to be present or to vote for or against a certain proposition.

Namely, the regulations for protection from competition infringement do not only include penalties and sanctions which exist to make participants behave and restrain themselves from a negative impact on the market. It seems essential to have more than one tactic for defending the market from the negative impact of competition infringement.

Parties in the restrictive agreements are faced with discrepancy since restrictive agreements are characterized by the inherent instability. On one hand, participants are encouraged to cooperate in order to avoid competition and gain additional profit. On the other hand, they are encouraged to abandon collusionand increase their production (with a decline in prices) in order to maximize their profits. That's the reason why each participant has an inherent encouragement to abandon collusion before being abandoned himself. A participant is quite aware that all parties, who are collusive, think alike. Moreover, that that behavior can lead to a collapse among parties on the market (Rakić, 2014, p. 246).

Taking in consideration all previously stated which undoubtedly comes from game theory, it would be tempting for a participant to report a collusion

on the market since that participant is aware that he will be discredited on the market which can bringgreater harm than gain.

3.3. Sanctions against restrictive agreements in the Republic of Serbia

In order for a norm to be complete, it needs to have a possible sanction too. Legal regulations are always protected by some adequate measures against violation of the rights. This paragraph will explore types and effects of the sanctions.

Measures stated in the Law are the following:

1. Measures for removal of competition infringement
2. Measure of deconcentration
3. Measure for protection of competition
4. Procedural penalty measure.

Firstly, measures for removal of competition infringement from Article 59 of the Law, represent a set of measures with the aim to remove competition infringement, i.e., to prevent probable occurrence of the same or similar infringement, and to give orders to undertake certain behavior or prohibit certain behavior. Apart from these measures, there is also a possibility of setting structural measures aiming to eliminate the risk of repeating the same or similar infringement. Structural measures are set by the Commission. The government is responsible for prescribing conditions for setting these measures, however, there has not been any regulation issued since 2009 when the Law was passed. Thus, there is not any possibility for the Commission to use these measures due to violation of the principle of legal certainty.

Secondly, measure of deconcentration, which is explored in Article 67 of the Law, refers to a situation when the Commission determines the conduct of concentration for which the approval is not issued, or failure to fulfill conditions and obligations of conditional approval of concentration, it may enact a decision imposing measures to concentration participants that are necessary for establishing or preserving competition on the relevant market.

Thirdly, Article 68 of the Law states that a measure for protection of competition will be set to a participant in the form of an obligation to pay a monetary sum in the amount up to 10% of the total annual revenue generated on the territory of the Republic of Serbia, if it:

abuses a dominant position in the relevant market;

1. concludes or implements a restrictive agreement;

2. fails to perform or implement measures to eliminate competition infringement, or measure of deconcentration;
3. conducts a concentration oppose to the obligation of interruption, or for which the approval for implementation of concentration is not issued.

Lastly, procedural penalty measures are stated in Article 70 of the Law and issued by the Commission in the amount between 500 EUR and 5,000 EUR per day, for each day of the conduct contrary to the orders issued by the Commission, if it:

1. fails to comply with the Commission's request to submit, disclose, make available or provide access to the requested data, disables the entry into premises, or disable investigation in other manner, that is, deliver or provide incorrect, incomplete or false information;
2. fails to comply with the interim measure;
3. fails to submit notification of concentration within the given time period.

It should be stated here that 10% of the total annual revenue in the Republic of Serbia is not a harsh penalty since this number can be easily manipulated. It may be also determined that the "gain" of competition infringement is greater than the amount of 10% of the total annual revenue.

4. Restrictive agreements in the European Union

A regulation that regulates the concept of prohibition of restrictive agreements in the European Union is stated in Article 101 (ex Article 81 TEC) of the Treaty on the functioning of the European Union (hereinafter: the Treaty).

The first paragraph of Article 101 of the Treaty prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States, and which have as their object or effect the prevention, restriction or distortion of competition within the internal market.

In order to make this regulation more precise, there are five provisions, which are considered to be restrictive agreements, listed: agreements that directly or indirectly fix purchase or selling prices or any other trading conditions; agreements that control production, market, technical development, or investment; agreements that make the market or sources of supply divided; agreements that provide dissimilar conditions to equivalent transactions with

other trading parties, thereby placing them at a competitive disadvantage; agreements that require acceptance from the other parties that has no connection either with the subject of that contract or with the agreements itself.

As stated in the second paragraph of the Article of the Treaty, any prohibited agreement or decision will be declared void.Article 3 states that it is possible for an agreement to have all provisions from the first paragraph and still be valid if it contributes to improving the production or distribution of goods, or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit if that benefit is greater than the "cost" of the agreement. Moreover, the agreement must not provide conditions to eliminate competition from the market.

The system of exemption from prohibition of restrictive agreements by the Commission used to exist in the European Union from 1962 to 2004. Due to a big number of requests for individual exemption from prohibition submitted to the Commission, on May 1, 2004 a decision no. 1/ 2003, which was issued by the Council of the European Union on December 16, 2002, entered into force, and it is still in use. This decision made all the restrictive agreements, decisions, and practices not prohibited without issuing a special decision by the European Commission for exemption from the prohibition. This regulation made the Commission not responsible by making the participants on the market accountable for verifying restrictions of agreements.

According to all previously said, the system established after the decision 1/2003 relies on participants on the market to behave according to the regulations of the European Union, and misbehavior is directed to post control by the Commission, national bodies for protection of competition and courts (Fišer Šobot, 2019, p. 962).

5. Conclusion

Taking in consideration great benefit of intense competition in flourishing industries, it can be said that The Republic of Serbia should be persistent in improving the position of the participants on the market. Since the European Union uses the model of self-accountability and government intervention on the market, the Republic of Serbia falls behind when it comes to the methods for protection of competition used in the world.

Regulations for competition infringement are incomplete in the Republic of Serbia, and by being incomplete they are not used properly since there are some cases where these incomplete regulations cannot be applied. The protection of the market in the Republic of Serbia provided by five responsible

people seems to be absurd. Apart from regular tasks, the Commission does not have means to plan and project decisions which shall be used to improve competition in the long term.

I personally think that due to disorganization and inconsistency in the practice of protection of competition, the protection of the market should be given to some specialized courts for protection of competition. In addition, the right for procedural initiation should be given to a potentially aggrieved party which will undoubtedlyprovide results.

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UREĐENJE RESTRIKTIVNIH SPORAZUMA U REPUBLICI SRBIJI SA OSVRTOM NA PRAVO EVROPSKE UNIJE

REZIME: U ovom radu su razmotrena pitanja pravnog regulisanja pojma restriktivnog sporazuma u Republici Srbiji i načelno uređenje pojma restriktivnog sporazuma u Evropskoj uniji. Takođe, je objašnjen i pojam konkurencije da bi se videla celishodnost zabrane sporazuma čiji je cilj povreda konkurencije. Razmotreno je i pitanje potrebe i načina zaštite konkurencije. Cilj ovog rada jeste objašnjenje potrebe postojanja restriktivnih sporazuma i zbog čega se tržište od njih treba štititi i da li se treba štititi od svih ili samo od pojedinih restriktivnih sporazuma. Takođe je razmotreno pitanje da li se konkurencija štiti od svih povreda ili samo od pojedinih. Na osnovu svega iznetog se može zaključiti da postoje velike praznine u regulisanju povreda konkurencije u pozitivnom pravu Republike Srbije u odnosu na pravo Evropske unije.

Ključne reči: *Restriktivni sporazum, povreda konkurencije, mere zaštite konkurencije, konkurencija u Evropskoj uniji.*

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A CONCLUSION OF CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

ABSTRACT: The international exchange of goods is done through a contract on the international sale of goods. A conclusion of a contract on the international sale of goods is based primarily on the autonomy of the will of the parties, unless that autonomy of will is limited by the compulsory regulations of the states. All sources of law cited in the paper, such as international conventions, autonomous sources of law and even customs and business ethics, can be changed by the disposition of the will, because they are of a dispositive character. The contracting parties most often agree on the application of the United Nations Convention on Contracts for the International Sale of Goods, the so-called Vienna Conventions, except in cases where there are general conditions and standard contracts. The Vienna Convention, which is a compromise of continental, Roman and Anglo-Saxon law, is most often contracted. The offer and its acceptance are necessary for the conclusion of the contract, except for standard and formal contracts.

The offer is a final act, and the acceptance of the offer is a statement of the agreement with the offer. The offer must have essential elements of the contract, but it can also have irrelevant elements. By concluding a contract with the application of INCOTERMS clauses, most irrelevant elements of the contract are regulated.

Key words: *The Contract for the International Sale of Goods, the Vienna Convention, an offer for the conclusion of a contract, the acceptance of the offer, a conclusion of a contract.*

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1. Introduction

In order to consider the conclusion of a contract on the international sale of goods, it is necessary to indicate the sources of law that regulate this contract. This will be presented through a comparative overview of national legislation and international sources, and within them both offers and acceptance of the offers. These sources of law can be divided into international conventions, autonomous sources of law, customs and business ethics. The main aspect of this article will be directed towards the offer and the conclusion of the contract on the international sale of goods.

The offer for the conclusion of the contract will be presented through the concept of supply, the effect of supply and its effect. The acceptance of the offer will be presented as a whole through an analytical consideration of the notion of acceptance of the offer, withdrawal and revocation of the offer for concluding the contract, time and place of concluding the contract and as a form of international sales contract.

Within the conclusion of the article, the conclusions reached during the study and research of this topic will be summarized. For the elaboration of this article, the methodologies used will be historical method, method of comparative law, comparative-theoretical method and other legal methods used in the analysis of the topics such as this one. Analytical-descriptive and synthetic methods will be used as the basic approach. This application of the methods should enable a systematic presentation of the existing conceptual and empirical knowledge.

2. Sources of international trade law

2.1. Division of sources of international trade law

Sources of international trade law can be divided into international conventions (so-called *hard law*), autonomous sources (so-called *soft law*), customs and business ethics.

a) international conventions

The need for unification of the law was imposed very early, with the establishment of the International Institute for the Unification of Private Law in Rome (UNIDROIT 1926). Its significant result was the drafting of the Uniform Hague Law in 1964. The draft law took into account the states

belonging to the civil law legal system, the German legal system, which have their legal basis in the Roman law, as well as in the law of the United States, specifically the Uniform Commercial Code of the USA of 1962.

The efforts of the international community have led to the establishment of the United Nations Commission on International Trade Law (UNCITRAL 1966). After the task was done, the UN General Assembly, with its resolution (General Assembly Resolution 33/93, 1978) made a decision to convene a conference in Vienna. At that conference, the United Nations Convention on the International Sale of Goods was adopted - the so-called **Vienna Convention** (The United Nations Convention on the International Sale of Goods, 1980).

b) autonomous sources

These sources are named autonomous owing to the common characteristic of all autonomous sources because they originate outside the states. These sources are created by economic entities, international organizations, etc. Autonomous international trade law usually signifies formal, standardized contracts and general terms and conditions. Formal contracts and general business conditions represent codified customs that govern certain markets.

United Nations Commission for Europe formed the Economic Commission in 1947. This commission passed a number of formal contracts in international trade. Among others, some of the contracts are the Geneva general conditions and standard form contracts. Typical international sales contracts are intended for the sale of industrial goods, etc. (Geneva general conditions and standard form contracts 1953). Whether they will be applied depends on the autonomy of the will of the contracting parties, i.e. if contracted by the contracting parties.

The International Institute for the Unification of Private Law adopted the UNIDROIT principles of international trade contracts (UPC 1994). In the following period, these principles underwent significant changes and amendments. UNIDROIT principles must be applied if the contracting parties explicitly agree on their application. Their application is also possible when the parties of the contract have not determined the applicable law (Divljak, Marjanski & Fišer Šobot, 2019).

The work of the International Chamber of Commerce, founded in Paris in 1919, also contributed to the codification of legal rules intended for international trade. Namely, the Chamber of Commerce, among other basic activities, has adopted a large number of INCOTERMS clauses to date.The first clauses were passed in 1936, while the last edition of the INCOTERMS

clauses is the one for 2020. These clauses are contracted for the sale of goods and their aim is to facilitate international sales by using certain provisions of the clauses to regulate the issues of importance to the trade.

Along with the autonomous sources of law, the principles of European Contract Law should be noted, which are currently in a draft form, having not entered into force to date. These principles are the result of the European Parliament of the European Union, which adopted two resolutions of 26 June 1989 (A2-157/89), and 25 July 1994 (A3-0329/94)emphasizing the need to adopt the European Civil Code as the most effective method of harmonization in order to establish a single market without borders within the EU. The long-term work of the Commission on European Contract Law has resulted in the Principles of European Contract Law, which are the result of the convergence of different legal systems of the EU countries (PECL). There is no obligation to apply these principles - in order for it to enter into force and to be applied by the EU countries - it is necessary for all EU members to accept the application of these principles.

c) Customs

Customs are defined as a commercial practice that is so widely used that traders expect the contracting parties to act according to that practice. The contracting parties do not have to refer to customs because they are applied as such. However, customs take precedence over dispositive regulations governing a particular matter (Vilus, Carić & Šogorov, 1988).

The uniform law on the conclusion of a contract on the international sale of goods from 1964 defines customs as "a manner of treatment considered by the reasonable persons of the same nature, when in the same situation as the contracting parties, as the principle that should be applied to the conclusion of their contract"(Divljak, Marjanski & Fišer Šobot, 2019).

d) Business ethics

Business ethics are collected customs that are most often codified by national legislations and/or economic organizations. Business ethics can be general, when they refer to all economic branches, and special when they refer to a certain economic branch or trade of one type of goods. If general or special business ethics or other trade and business customs are contrary to the dispositive norms of this Law, the provisions of this Law shall apply, unless

the parties have explicitly agreed on the application of business ethics or other trade and business customs (Law on Contract and Torts, 1978).

3. Conclusion of the contract

3.1. The offer to conclude a contract

A contract is, by definition, an agreement of the contracting parties, and this presupposes the consent of the will. Concluding contracts in domestic, and particularly in international legal trade of goods is usually a difficult and complex task. In international trade, these difficulties arise because there are different understandings about the legal significance of the offer and acceptance of the offer, the moment of concluding the contract, the deadlines by which the offer is binding and whether it is binding at all. The main obligation of the offeror is to maintain the offer, and the acceptor, on the other hand, to conclude the contract with consent.

Almost all national legislations recognize the difference between an offer that becomes a contract through negotiations and other initiatives that create the possibility of acceptance. When a proposal is reached, the proposal must be specific, detailed and final. The finality of the proposal makes it possible to reach an offer for the contract. It is understood that the offeree may, instead of accepting, declare about the offer, or may submit a counteroffer in order for the original offeror to declare about it. Only when the contracting parties accept the offer in the customary or specially designed manner - the contract is created.

A proposal sent to an indefinite number of persons will be considered only as an invitation to make offers, unless the person making such a proposal clearly indicates otherwise (Vienna Convention 1980).

If we tried to analyse the definition of the offer more comprehensively, we would come to the conclusion that it does not actually contain a personal element of the offer (Vukadinović, 2009).In order for the offer to be accepted, there must be an intention to conclude the contract (*animus contrahendi*) (Divljak, Marjanski & Fišer Šobot, 2019).

Under the general conditions of the UN Economic Commission for Europe (in almost all areas of buying and selling), the case of a *firm offer* is foreseen first, and only then, if the offer is not indicated as firm, it is pointed out that it is not binding. “In the case of a firm offer with an indication of the deadline for acceptance, the contract is considered concluded at the moment when the seller receives the buyer’s notice of acceptance of the offer by a

registered letter." In the event that a firm offer does not provide for a period within which the contract is to be confirmed, it shall be deemed concluded at the time when the seller receives notice of acceptance of the offer in a safe manner within a reasonable time which may not exceed 15 calendar days (Đurović 1986).

3.2. The effect of the offer

The bid is, by its legal nature, a unilateral declaration of will that binds the offeror. It is a causal statement of will. It reflects the importance of the cause as an economic effect that is to be achieved in economic turnover. A declaration of will establishes a certain legal business. In the case of the subject of our analysis, the acceptance of the declaration of will creates a contract. According to the Vienna Convention, the offer produces legal effect when it reaches the offeree. "It is considered that the offer has reached the offeree if it was communicated to him orally or in another way and delivered to his headquarters or to a postal address, or if he does not have a registered office or a postal address, to his regular residence"(Vienna Convention, 1980).

The acceptance of the offer, therefore, takes effect from the moment the statement of consent reaches the offeror, unless it arrives after the deadline specified in the offer. If the deadline is not determined, and the offer has arrived to the offeree, then it produces effect within a reasonable time, taking into account the circumstances of the business and the speed of the means of communication used by the offeror. An oral offer must be accepted immediately, unless the circumstances indicate otherwise (Vienna Convention, 1980).

3.3. Withdrawal, revocation and acceptance of the offer for concluding the contract

An offer may be revoked or withdrawn until it begins to produce legal effect. If the offer reaches the offeree, it can be revoked. Comparatively legally observed in the common law system, for example, it is accepted that the offer is, in principle, revoked until the contract is concluded, provided that it reaches the offeree before sending its acceptance.

According to the civil law legal systems (French and Italian) there is a general rule on the offer and revocation according to which only the contract can impose a legal obligation,while the offer cannot be binding. Namely, the offeror creates an offer with a unilateral declaration of will, so he is free to cancel it. The offeror can set a deadline for the offeree to accept it.

The solution accepted in the Vienna Convention on the revocation of the offer represents a compromise between the continental, civil and common law legal systems. According to the Vienna Convention, the offer takes effect from the day it arrives. If the offer states that it is irrevocable, the offer may be withdrawn if the withdrawal arrived to the offeree before or at the same time as the offer (Vienna Convention, 1980).

The revocation of the offer is regulated differently in different legal systems. In the countries with the continental law legal system, the offer is, as a rule, irrevocable (Bianca, Bonnell, 1987). In the common law legal systems, with the exception of the USA, the offer is always revocable. The revocability of the offer is not affected by the fact that the offer states that the offeror's statement is irrevocable, nor by setting the deadline for acceptance of the offer. Under the U.S.A. law, a trader's offer to buy or sell goods, contained in a signed document, from which it is concluded with certainty that the offeror wishes to make a firm commitment, cannot be withdrawn due to lack of compensation until the deadline specified therein. If the deadline is not indicated, then it is so until a reasonable deadline has expired, provided that the period to which the offeror is bound by the offer may in no case be longer than three months. In case the offer is printed on the offeree's form, the offeror must sign separately next to the place that contains his offer (Uniform Commercial Code of the USA, 1962).The Vienna Convention stipulates that until the contract is concluded the offer can be revoked, if the revocation of the offer reaches the offeree before he has sent his acceptance (Vienna Convention, 1980).

In most legal systems, in addition to the essential elements of goods and prices, the offer may contain other elements such as delivery, place, deadline, packaging, transport clauses, etc. In commercial practice, the term *order* is also used. The order would represent the acceptance of the offer only if it fully corresponds to the offer published on the seller's website or on social networks, within the set deadline.

3.4. Time and place of concluding the contract

The time of concluding the contract depends primarily on whether the contract is concluded between present or between absent persons. If the contract is concluded between the present persons - the offeree is obliged to declare himself about the offer immediately. If the offeror leaves him a deadline - then the contract is created if the offeree accepts the offer within the deadline (Vienna Convention, 1980).

The Vienna Conventionapplies to contracts on the sale of goods concluded between parties having their registered offices in the territories of the states, while it is necessary that alternatively one of the following conditions is met:

a) that those states are the contracting states,
b) that the rules of private international law refer to the application of the law of one of the contracting states (Vienna Convention, 1980).

Article 1 of the Vienna Convention appears to be particularly important because it resolves the issue of the time when a transaction can be considered international. In theory, one starts from a subjective criterion, an objective criterion or a mixed criterion.

The subjective criterion is determined by the citizenship or domicile of the contracting parties. The objective criterion, on the other hand, starts from the fact that the transfer of goods takes place from one state to another. The mixed criterion, in the end, contains both subjective and objective criteria in itself.

The provisions of the Convention shall always apply if both contracting parties have their seats in the countries that are parties to the Convention. An exception is the case where the nationality of a contracting party shall not be taken into account where the rules of private international law refer to the application of the law of a contracting country. However, if the contracting parties have their seats in the countries that are not signatories to the Convention - the application of the Vienna Convention will be taken into account if the contracting parties have provided for it in the contract or it can be determined on the basis of their previous business.

Starting from the principle of autonomy of the will of the parties, the form of the contract for the international saledepends on the will of the parties. Of course, in most cases, in order to avoid proving that the contract has been concluded, the parties will apply a written form.

The Vienna Convention stipulates that the contract on the sale of goods does not have to be concluded or confirmed in writing nor is it subject to any other requirements regarding the form of the contract (Vienna Convention, 1980).

In the event that a contracting state has made a reservation in respect of the form of the cotractstipultaed by the Vienna Convention, this provision shall not apply, but the provisions of the national law of the State which has made that reservation shall apply.

4. Conclusion

International exchange of goods is performed through the contracts on the international sale of goods. The basis for concluding the contract is based on the sources that regulate it. These sources can be divided into conventions, autonomous sources of law, customs and business ethics.

In order to conclude the contract on international sales, the offer and the acceptance of the offer are necessary, except for standard form contracts. Form and type, on the other hand, contain the text of the contract, so that the buyer has the flexibility to accept or not to accept the text of the contract, and if he accepts it – the obligations of the contracting parties arise. The offer for concluding the contract, whether given orally or in writing, directly or through a representative, or through means of communication, is a unilateral declaration of will and contains important elements, and possibly some of the irrelevant elements on the basis of which the contract would be concluded.An invitation to negotiations is not an offer at the same time. If the offeree accepts the invitation for negotiations – the result of the negotiations could be an offer to conclude a contract.

Acceptance of the offer in the case of the contract on international purchase and sale must correspond to the offer in all respects. In other words, it must be in accordance with all the elements of the offer. The essential elements of the offer are the goods and the price. The offer can be accepted under certain conditions, withdrawn and revoked. The time of concluding the contract appears to be particularly important because the time of concluding the contract depends primarily on whether the contract is concluded between the present or absent persons. The place of conclusion of the contract is also important because it is determined by the seat of the contracting parties and it represents a point of attachment that serves to determine the applicable law that will be applied. The Vienna Convention defines in which cases it will be applied on the basis of the point of attachment, unless it is a matter of the standard form contracts.

The contracting parties determine the form of the contract on international sales. It is usually a written form in order to avoid later proving the content of the contract and its legal validity.

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ZAKLJUČENJE UGOVORA O MEĐUNARODNOJ PRODAJI ROBE

REZIME: Međunarodna razmena robe se obavlja putem ugovora o međunarodnoj prodaji robe. Zaključenje ugovora o međunarodnoj prodaji robe se zasniva pre svega na autonomiji volje stranaka, osim ukoliko ta autonomija volje nije ograničena prinudnim propisima država. Svi izvori prava koji se navode u radu kao što su međunarodne Konvencije, autonomni izvori prava pa čak i običaji i uzanse se mogu dispozicijom volje menjati jer su dispozitivnog karaktera. Ugovorne strane najčešće ugovaraju primenu Konvencije Organizacije Ujedinjenih nacija o ugovorima o međunarodnoj prodaji robe tzv. Bečke konvencije, osim u slučajevima gde postoje opšti uslovi i tipski ugovori. Najčešće se ugovara Bečka Konvencija koja je kompromis kontinetalnog, romanskog i anglosaksonskog prava. Ponuda i prihvat ponude su neophodni za zaključenje ugovora, osim kod tipskih i formularnih ugovora. Ponuda je konačan akt, a prihvat ponude je izjava ponuđenog kojom se saglašava sa ponudom. Ponuda mora imati bitne elemente ugovora, ali može imati i nebitne elemente. Zaključenjem ugovora uz primenu klauzula INCOTERMS-a reguliše se većina nebitnih elemenata ugovora.

***Ključne reči*:** *ygovor o međunarodnoj prodaji robe, Bečka konvencija, ponuda za zaključenje ugovora, prihvat ponude, zaključenje ugovora.*

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THE PROTECTION OF JUVENILES IN A CRIMINAL PROCEEDINGS

ABSTRACT: In recent years a significant attention has been paid to the protection of juveniles in the context of a criminal procedure. It cannot be denied that the participation of juveniles in these proceedings could be the cause of secondary victimization and trauma. In addition, the specific position of the child established by the UN Convention on the Rights of the Child requires the minors to be allowed to actively participate in a criminal proceedings and to be adequately informed about various aspects and consequences of the procedure. The paper first gives a brief overview of the relevant international documents on the rights of juveniles in a criminal procedure, followed by the analysis of the domestic normative framework in the same field. A formal dogmatic approach has been applied. Afterwards, the author summarizes the state of the rights of minors in a criminal procedure in practice in Serbia. The aim of this paper is to point out the possible improvements of the position of juveniles in a criminal proceedings in Serbia.

Keywords*: criminal procedure, juveniles, witness, victim.*

1. Introduction

The role of the victim in criminal procedure has been traditionally well recognized in Serbia, which is also known to be a characteristic of criminal procedures in other countries whose legal systems are based on the civil law tradition (Škulić, 2013, p. 183). With the adoption of Law on Juvenile

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Offenders and Criminal Protection of Juveniles (2006), the step has been made in the direction of further improvement of the position of juveniles as victims and witnesses in criminal proceedings. This legal text has been inspired by relevant international standards and modern scientific considerations on the position of juvenile offenders and juveniles as victims in criminal procedure (Bojić & Ahmed, 2015, p. 52). In that sense, the absolute priority is to enable fulfillment of the principle of the best interests of the child. The best interest of the child by all means implies the active participation of the child in all sorts of justice proceedings concerning the minor (Rap, 2016, p. 94).

Bearing in mind that the procedure in which minors appear as victims is in principle conducted in accordance with the provisions of the Criminal Procedure Code (2011, short: CPC) and that victim and witness protection services are still not sufficiently and evenly developed in Serbia, the question arises whether juveniles are appropriately protected during their participation in criminal procedure. This matter is of great importance because adequate protection could help to reduce stress experienced by the witness while giving evidence, resulting at the same time in an improvement in the quality of the testimony (Smith & Tilney, 2007, p. 2).

2. International framework

When it comes to the protection of child victims and witnesses of crimes in the international legal context, we should undoubtedly acknowledge the UN Convention on the Rights of the Child (1989, short: CRC), bearing in mind that this is a specific document that deals with all areas of children's rights. Namely, art. 39 provides that the contracting parties shall take all appropriate measures to encourage the psycho-physical recovery and social reintegration of the child victim, and that recovery and reintegration shall be carried out in conditions which promote health, self-respect and dignity of the child. Of special importance are art. 3, which obliges all authorities to take into account the best interests of the child in any decision-making process in which the child is involved, and art. 12, which obliges states to allow a child who is capable of forming an opinion to express his view in all relevant proceedings in accordance with the national positive legal framework. There is also an obligation to pay due attention to the expressed opinion of the child. Although the remaining articles of the CRC regarding procedure in criminal matters refer to children as defendants, they are also of great importance because they prohibit child to be forced to testify or admit guilt, and also guarantee the child's right to a free interpreter and protection of privacy (article 41).

The Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (UN ECOSOC Resolution 2005/20) are based on the standards established by the UN Declaration on the Fundamental Rights of Victims of Crime and Abuse of Power (1985), CRC and other relevant international instruments in order to establish the minimum of necessary conditions for the protection of child victims and witnesses in criminal proceedings, while, at the same time, striving to continuously raise the level of protection and quality of services. The terms "victim" and "witness" in criminal proceedings in this resolution denote children and adolescents under the age of 18 who are victims or witnesses of a criminal offense, regardless of their role in the criminal matter, or participation in criminal proceedings against a particular person or group of persons. The basic principles of involvement of minors in criminal procedure are:

- dignity
- prohibition of all forms of discrimination
- best interests of the child
- right to participation in accordance with the age and personal capacities of the child.

Guidelines insist on a timely and complete informing of children as participants in the judicial process. Also, it is extremely important to establish procedures and measures that take into account children's vulnerability, which includes: adequate interview rooms, interdisciplinary support services for children united under one roof, specially adapted courtrooms, breaks during testimony and appropriate deadlines and measures taken in order to reduce the number of court visits to the necessary minimum. In connection with the above, it is recommended to frequently use video recordings of previously given statements, as well as to establish procedural rules that prevent cross-examination of children, while at the same time taking into account the rights of the defendant. Furthermore, it should be possible for children to testify in the absence of the suspect, which usually implies for children to stay in special waiting rooms and special rooms that guarantee privacy.

Directive 2012/29 EU establishing minimum standards on the rights, support and protection of victims of crime (of the European parliament and of the Council of 25 October 2012) stipulates that victims of crime should be treated in a fair, sensitive and professional manner and without discrimination of any kind. Personal situation and personal needs, age, gender, disability and maturity of victims must be taken into account and with full respect for physical, mental and moral integrity of the victim. Crime victims should

be protected from secondary and repeated victimization, intimidation and retaliation, and should receive appropriate support to facilitate their recovery and access to justice. It has been emphasized that minors should also enjoy protection as crime victims, all in accordance with the principle of the best interests of the child and by taking into account the minor's ability to express his opinions.

Relatives or close persons of direct crime victims are also recognized as indirect victims by Directive 2012/29 EU, so they should as well be provided with protection intended for victims, in accordance with the national legal framework. It is envisaged that victims should receive all relevant information on the nature and consequences of judicial process at the moment of first contact with the competent authorities or other relevant persons related to the criminal prosecution. Information should be given in a clear and receptive manner. Victims have the right to be informed about the release of convicted persons if it is assessed that there is a risk to their safety, which should not apply to criminal offenses that fall under petty crime. Protection should be provided in a variety of ways, without excessive formalities and with equal representation of services in all parts of the country. Particularly vulnerable categories of victims need to be provided with specific expert services to reduce trauma and avoid secondary victimization, which includes the provision of medical services, emergency accommodation, legal advice and child protection. The right of children to testify or to express an opinion should not be denied on the assumption that their age prevents them from participating in criminal procedure. The technical aspects of procedure in criminal matters should be designed to minimize the possibility of contact between suspects and victims. Certain categories of victims, such as victims of trafficking in human beings and children, are, as experience shows, often particularly exposed to the risk of secondary victimization, intimidation and revenge. Therefore, these risks should be assessed with particular caution-starting from the assumption that special measures will be needed to protect these persons.

When it comes to children as victims, Directive 2012/29 EU provides that the same natural or legal person could be both the child's representative in criminal procedure and his guardian. States should take measures to encourage reporting of victimization, while the criminal reporting process itself should be structured in a way that takes into account specific needs of victims. Article 10 of the directive provides the right of victims to be heard in judicial process and to contribute to the collection of evidence. When the decision of authorities is not to prosecute, victim should be given the opportunity to request a review of such decision, Article 11, 12 and 13 provide that victims

have the right to legal aid and reimbursement of appropriate costs. Article 20 regulates the right of victims to be accompanied by a trustworthy person during the implementation of relevant actions, unless there are reasons that exclude this possibility, as well as the obligation of authorities to minimize the number of medical examinations to which victims are subjected. When assessing the need for protection, special consideration should be given to the personal characteristics of the victim, as well as to the nature and circumstances of the crime.

Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice, adopted on 17 November 2010, have been developed under the auspices of the Council of Europe and with the participation of eminent experts. The mentioned text refers not only to child witnesses and victims in criminal procedure, but also to the participation of children in administrative and civil processes. The document has also been based on the principles of the respect for dignity, non-discrimination, best interests and participation of the child, but it additionally emphasizes principle of the rule of law.

Guidelines imply that children should also enjoy the benefits of the principle of the rule of law, so that the legal guarantees that apply to them must not be weaker than the guarantees that apply to adults. The right to appeal and the tight to use legal aid must be guaranteed to children, so that denial or restriction of these rights cannot be justified by the best interests of the child. The guidelines suggest that audio-video technologies should be used in all situations where their application could ensure the avoidance of trauma for the child. Suggestive questions should be avoided and it should be possible for the judge to decide whether a child should testify, guided by the best interests of the child. During the procedure, children should be treated with respect and recognition of their needs and capacities, while keeping in mind that there could be some communication problems caused by their age. It is necessary to create a non-intimidating and child-friendly environment, with a prior acquaintance of children with the purpose, nature and methodology of court proceedings.

3. Normative framework in the Republic of Serbia

The position of child victims and witnesses in criminal procedure in Serbia is regulated by the provisions of two legal texts: the Law on Juvenile Offenders and Criminal Protection of Juveniles and the CPC.

CPC contains provisions on particularly sensitive witness, starting from the assumption that: age, life experience, lifestyle, gender, health condition,

nature and consequences of the committed crime and other circumstances of the case could may make the witness particularly sensitive. Procedural body may *ex officio,* or at the request of the parties or the witness himself, determine the status of a particularly sensitive witness (art. 103, par. 1).

However, more detailed provisions on the status of juvenile victims and juvenile witnesses of criminal offenses are contained in the Law on Juvenile Offenders and Criminal Protection of Juveniles, which deals only with juvenile victims and juvenile witnesses, and not with other categories of particularly vulnerable witnesses. In fact, if we examine the terminology used in the Law on Juvenile Offenders and Criminal Protection of Juveniles, we could come to a conclusion that its provisions refer primarily to the protection of juvenile victims, which speaks in favor of the complementary application of these two laws in the field of protection of juveniles who participate in criminal procedure primarily as witnesses.

Adequate interpretation of legal provisions at first requires clarification of some terminological ambiguities. The international normative framework uses the terms "child victims" and "child witnesses of crime", while the term "victim" is only sporadically used in the Serbian positive legal framework. As a matter of fact, the CPC does not actually use the term „victim" at all, although it defines the injured party/victim as a person whose personal or property rights have been violated or endangered by criminal offense (art. 2, para. 1). However, as this definition of the "injured party" is much wider than the definition of the victim in the criminological sense and the notion of passive subject in the criminal law sense, there is no doubt that the protection guaranteed by the domestic national framework applies to victims of crime as defined in the international context (Škulić, 2015, p. 2). Thus, according to the Declaration on Fundamental Principles of Justice for Victims of Crime and Abuse of Power, victims of crime are persons who have individually or collectively suffered harm, and above all an attack on their physical and mental integrity, moral suffering, material loss or gross attack on their basic rights by acts or omissions that constitute a violation of the criminal law of a member state, including laws prohibiting criminal abuse of power. In victimological sense, on the other hand, the term "victim" has been broadly defined, so that the victim is any person who suffers any restriction in his rights (Nikolić Ristanović, 2019, p. 86). The literature also points out that the use of the term "injured party" essentially expands the circle of persons being able to enjoy specific protection for victims. This is the case with minors who have actually just witnessed certain crimes, but could also be the "injured party" if passive

subjects of the crime are their closest relatives, as it often is the case with domestic violence (Škulić, 2015).

CPC defines "witness" as a person who is likely to give information about criminal offense, perpetrator or other facts which should be established in the proceedings (art. 91). It is not disputed that a child in certain cases may be able to reproduce previously perceived facts, so there is no need for the special definition of the child witness. According to the positive legal framework in Serbia, a "child" is a person under the age of 14, while the notion of a "juvenile" or "minor" is broader because it includes all persons under the age of 18. In the international legal framework, a "child" is considered to be a person under the age of 18, in accordance with the CRC, which impliesthat Serbian legal framework does not deviate from international protection standards because it guarantees specific protection to all persons under the age of 18.

Therefore, the child could be provided with appropriate protection both through the application of the CPC and through the application of the Law on Juvenile Offenders and Criminal Protection of Juveniles. However, the Law on Juvenile Offenders and Criminal Protection of Juveniles is *lex specialis* in matters referring both to juvenile offenders and to juveniles as victims, which implies that the provisions of Law on Juvenile Offenders and Criminal Protection of Juveniles should be applied as a priority when it comes to protecting juveniles in criminal procedure.

The Law on Juvenile Offenders and Criminal Protection of Juveniles provides that the provisions of the Criminal Code (2006), CPC, the Law on the Execution of Criminal Sanctions (2014) and other general regulations should be applied in criminal matters concerning juveniles − unless they are in conflict with the Law on Juvenile Offenders and Criminal Protection of Juveniles. However, the CPC itself also recognizes certain protective mechanisms established in favor of a minor. Thus, a minor who, given his age and mental development, is not able to understand the significance of the right to be released from the duty to testify, cannot be examined as a witness, unless the defendant himself requests so, pursuant to art. 94, para. 2. In the spirit of respecting the special vulnerability of minors, it is provided that an oath is not to be given by a witness who is not of legal age at the time of the hearing (art. 97).

A minor as a witness has the right to basic witness protection in accordance with art. 102 of CPC, so that the body of procedure is obliged to protect the injured party/victim or witness from insults, threats and any other attack, and the public prosecutor or the court may request that the police take

measures to protect the injured party or witness. Although Law on Juvenile Offenders and Criminal Protection of Juveniles is predominantly applied, there are no legal obstacles for a public prosecutor, presiding judge or single judge to make a decision on determining the status of a particularly sensitive witness in concordance with art. 103 of CPC. The rules on the examination of a particularly sensitive witness are also important, according to which questions should be asked to a particularly sensitive witness only through a body of proceedings that will treat witness with special care and while trying to avoid possible harmful consequences on the witness's personality, physical and mental condition.

Furthermore, the examination may be conducted with the assistance of a psychologist, social worker or other expert, which is decided by the body of the procedure, which also may decide to examine witnessby using technical means for video and sound transmission. Examination may be implemented without the presence of parties and other participants in the room in which the witness is located in or in an authorized institution suitable for the examination of particularly sensitive witnesses. Witness enjoys specific protection in the form of a ban on confrontation with the defendant, unless the defendant himself requests so, and the procedural body allows it, taking into account the degree of sensitivity of the witness and the rights of the defense (art. 104 of CPC).

Court may grant witness the status of a "protected witness" or some other special protection measure due to circumstances indicating that witness could expose himself or others close to himself to significant harm. These measures include examination of a protected witness under special conditions and in a manner that ensures that his identity is not publicly disclosed, and exceptionally even not disclosed to the defendant and his defense counsel. When applying this and other similar measures, one must not act in a way that calls into question the right to a fair trial, or in a way that leads to the exclusion of the principle of contradiction (Matijašević Obradović & Subotin, 2020, pp. 36–37).

On the other hand, the Law on Juvenile Offenders and Criminal Protection of Juveniles envisages a number of specific rules which guarantee special protection to the minor injured party/victim during the implementation of appropriate criminal proceedings.

First, the judicial panel that judges an adult in the case of specific criminal offenses that have harmed minors will be presided over by a judge who has acquired special knowledge in the field of children's rights and protection of minors. These crimes include: crimes from the group of crimes against life

and body (aggravated murder, encouraging or assisting *suicide* and grievous bodily harm), crimes against the rights and freedoms (kidnapping), crimes against sexual freedom (such as rape and child sexual abuse), offenses against marriage and family (such as domestic violence and incest), offenses against property (such as robbery), crimes against health (enabling the use of narcotics) and offenses against humanity and other values protected by international law (such as human trafficking). It should be added here that the public prosecutor who has acquired special knowledge in the field of children's rights and protection of minors is also authorized to initiate proceedings that include special protection of minors for other criminal offenses, if he assesses that it is necessary in order to protect juveniles (art. 150).

Secondly, it is envisaged that the investigation should be conducted by an investigating judge who has acquired special knowledge in the field of children's rights and protection of minors. Bearing in mind that after entry into force of the current law on minors there have been some substantial changes in the very concept of criminal procedure, so that there is no longer an institute of an investigating judge and that now investigation is led by public prosecutor – in the particular case public prosecutor should be adequately trained. Furthermore, specialized police officers who have acquired special knowledge in the field of children's rights and criminal protection of minors should participate in the investigation of criminal offenses to the detriment of minors, pursuant to art. 151. It has already been noticed that the police, according to the existing concept of criminal procedure which includes prosecutorial investigation, does not have a significant contact with juvenile victims in the investigation phase, which means that police officers participating in pre-investigation procedure should be adequately trained (Škulić, 2015).

Third, the public prosecutor and judges will treat juvenile victim in a manner that takes into account his age, personality traits, education and circumstances in which he lives, especially trying to avoid possible harmful consequences of the procedure for his personality and development. The interrogation of juveniles will be conducted with the help of a psychologist, pedagogue or other expert, and in the case of a juvenile witness who has been harmed by the above listed criminal offenses, the interrogation may be conducted no more than twice, or just exceptionally several times if necessary for criminal procedure purposes. However, in case that juvenile is interrogated more than twice, the judge is obliged to take special care of the protection of personality and development of the juvenile, pursuant to art. 152.

Fourth, if it is assessed that it is in the interest of the minor, the principle of taking evidentiary actions directly before the court and the parties may be

deviated from. Namely, if, considering peculiarities of the criminal offense and personality traits of the juvenile, it is deemed necessary, judge shall order the juvenile to be heard using audio-video technology, so that hearing shall be conducted without the presence of parties and other participants. Parties and other entitled persons may ask witness questions through a judge, psychologist, pedagogue, social worker or other professional. Moreover, minors may also be interrogated in their apartment or other premises or in an authorized institution-organization professionally trained for the examination of juveniles with the use of technology for the transmission of images and sound. If a minor is interrogated in special premises or by means of audio and video technology, his testimony will always be read at trial or a recording of the interrogation will be played.

Fifth, if a juvenile is examined as a witness who is particularly sensitive or is in a particularly difficult state of mind, it is prohibited to confront him and the defendant, in terms of art. 153.

Sixth, the juvenile victim must have a legal representative from the first hearing of the defendant. When the juvenile does not have a representative, he will be appointed by the president of the court. Representation costs are borne by the court's budget. The obligatory engagement of a legal aid provides an additional guarantee that juvenile will be able to exercise his rights, which is in concordance with international documents that insist on respecting the principles of the rule of law when it comes to minors.

The seventh specificity refers to the identification of the defendant by the juvenile victim, in which case the court must act with special caution and in a manner that completely prevents the defendant from seeing the juvenile. It is clear that this protective measure prevents additional trauma and, in some cases, intimidation of a minor.

The eighth feature of the criminal procedure for acts by which minors have been damaged is that process must be urgent (art. 157). It is clear that urgency is insisted on because it would be inhumane to treat a juvenile in a way that requires him to be involved in criminal proceedings in a long-term manner.

4. Serbia – The state of affairs

Although the normative framework does contain appropriate measures in order to protect juvenile victims and juvenile witnesses, in practice it cannot be said that these vulnerable persons actually enjoy adequate protection.

National Strategy for the Realization of the Rights of Victims and Witnesses of Criminal Offenses in the Republic of Serbia for the period from 2020 to 2025 (2020),states that the current situation in this area is such that a network of assistance services for victims and witnesses of criminal offenses has not been fully established. In fact, the provision of assistance and support is still based on the engagement of services established in higher courts and prosecutor's offices such as: the War Crimes Prosecutor's Office, the Organized Crime Prosecutor's Office and the First Basic Public Prosecutor's Office in Belgrade and through individual civil society organizations, legal clinics and social welfare centers.

The National Strategy further states that there is no precise data on the number and structure of service providers for victim support and that it is also known that the geographical distribution and diversity of services are extremely uneven. Also, the criteria of professional qualification of service providers and the quality of services they provide are not defined, as well as the procedures for needs assessment and referrals to services. There are no precise mechanisms for the cooperation of service providers, as well as there is no system of coordination and financing of service providers. Supervision over the provided services lacks too. Training programs in the field of victim/witness protection have not been standardized.

When it comes to informing both the general public and the potential service users, information on available types of support is not systematized. There is also a significant problem in the area of financing, bearing in mind that in recent years certain services have been provided in *ad hoc* manner by using funds from international projects, so that the completion of a certain project negatively affects the sustainability of services.

The review of the current situation in the text of National Strategy indicates that the situation regarding the protection of crime victims and witnesses, including minors, has not changed significantly since 2015, when the research study on the protection of child victims in criminal proceedings was conducted under the auspices of UNICEF in Serbia. The results of the study indicated that juvenile victims were not adequately informed in most cases concerning criminal matters (Banić & Stevanović, 2015, p. 41). Moreover, examined court papers confirmed that children were *pro forma* informed. Also, the study pointed out that the possibility for a child to testify in a special room in court or other place was scarcely used, although at least in Belgrade there have been appropriate technical preconditions in place for the application of this measure. It was also noted that during the interrogation of juvenile victims in criminal proceedings before some basic courts, the services of

appropriate experts, such as psychologists and pedagogues, were not used at all. Furthermore, minors had to attend court in multiple sessions due to previous delays, whereby measures of separating a minor into a special room or other measures defined by law were not applied (Banić & Stevanović, 2015, p. 42).

5. Conclusion

There is an appropriate normative framework in the field of protection of juvenile victims and witnesses in Serbia. Proper implementation of such framework could provide full and meaningful protection of juveniles in criminal proceedings. The aforementioned framework is largely in line with relevant international documents, in particular with the Directive 2012/29 EU and CoE Guidelines on child-friendly justice.

However, there is some room for improvement of the normative framework, primarily through modernization of certain provisions of Law on Juvenile Offenders and Criminal Protection of Juveniles which have not been adapted to conceptual changes of criminal procedure coming from the adoption of the CPC in 2011, but also through adoption of appropriate bylaws. It is necessary to adopt new rulebooks and protocols that would, among other things, define professional qualifications for persons working in the field of juvenile victims and witnesses protection. In doing so, conditions of professional qualifications should not be such to focus only on formal education, but also on personal and professional qualities of service providers. In that sense, the scope and field of work of civil society organizations should be defined in particular.

Furthermore, appropriate protocols should define order of actions and mechanisms for cooperation between the state and civil sector, and should also define cooperation of judicial system with educational system and systems of social and health care.

In order to provide the youngest persons with appropriate protection which they deserve, in extremely difficult moment when they suffer consequences of crime or participate in criminal process in various capacities, appropriate education of official actors is also needed.

In addition, it is necessary to adequately inform not only the professionals, but also the wider public about the rights of both adult and juvenile victims and witnesses of crime. Implementation of appropriate media campaigns is extremely important given the huge impact of modern media on general population and especially on young people (Joksić & Rajaković, 2020, p. 46).

It is also necessary to design educational content in order to draw attention to protecting witnesses and victims in criminal proceedings, which would undoubtedly result in greater appeal of interested persons to competent services and consequently in more intensive development and expansion of services for witnesses and victims.

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ZAŠTITA MALOLETNIH LICA U KRIVIČNOM POSTUPKU

REZIME: Tokom poslednjih godina značajna pažnja se posvećuje zaštiti maloletnih lica u krivičnom postupku, s obzirom da se ne može poreći da učestvovanje u krivičnom postupku može biti uzrok sekunadrne viktimizacije i traumatizacije. Osim toga, specifičan položaj deteta ustanovljen Konvencijom UN o pravima deteta iziskuje da se maloletnim licima omogući aktivno participiranje u postupku koji se neposredno odnosi na njih same. Nužno je i da maloletno lice bude informisano o prirodi, svrsi i mogućim ishodima krivičnog gonjenja. Izlaganja u radu su koncipirana tako da nakon predstavljanja relevantnih međunarodnih dokumenata o pravima maloletnih lica u krivičnom postupku sledi analiza domaćeg normativnog okvira primenom normativno-dogmatskog metoda. Potom autor ukratko ukazuje na ostvarivanje prava maloletnih lica u krivičnom postupku u praksi u Srbiji. Cilj rada jeste da se ukaže na načine unapređivanja položaja maloletnih lica u krivičnom postupku u Srbiji.

Ključne reči: *krivični postupak, maloletna lica, svedok, oštećeni.*

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FEMICIDE PREVENTION IN THE LIGHT OF NEW LEGAL SOLUTIONS APPLICATION IN THE CRIMINAL LAW OF REPUBLIC OF SERBIA

ABSTRACT: In the modern society, domestic violence is a socially unacceptable phenomenon. The most common form of domestic violence is the violence against women, while as the most severe form of violence against women singles out femicide - a gender-based murder. One of the measures taken by Republic of Serbia in order to reduce domestic violence is the adoption of the Law on Prevention of Domestic Violence. In order to prevent femicide, the most important innovations provided by law are urgent measures imposed by the competent police officer; a mandatory risk assessment of recurrence violence; a mandatory coordination and cooperation between the competent services and case records violence. This paper analyzes not just criminal and family law measures providing protection from domestic violence, but also the results of the application of these measures in the context of femicide prevention.

Keywords: *domestic violence, femicide, the Law on Prevention of Domestic Violence, emergency measures.*

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1. Introductory considerations

Violence against women is a widespread social phenomenon. Although violence against women and domestic violence has long been viewed as a private matter relyingto tradition and deep-rooted patriarchal conceptions, and that they are, as such, not dangerous to society and in which the state should not take part (O'Donovan, 1993, p. 107), the modern approach to this problem is based onthe view that they are not just an individual problem, but a problem of the whole society. Just like mentioned, traditional perceptions have been a major obstacle to recognizing violence against women and domestic violence as a way of violating human rights, the most important of which are the right to liberty, the righton the inviolability of physical integrity and the right to life (Nikolić Ristanović, 2006, p. 82).The need to sanction violence against women first arose internationally. Over the past few decades, several international documents have been passed that address violence againstwomenas a form of crime, pointing to its specifics, manifestations andmeasures that need to be taken in order to prevent and as a prevention. Among the documentsadopted at the level of the Council of Europe, and in addition to the recommendations, the most important is the Convention on Preventionand the fight against violence against women and domestic violence (Istanbul Convention), adopted in 2011 which was ratified by the Republic of Serbia in 2013.

Although victims of domestic violence can be female or male, as the most commonform of domestic violence is violence against women. Understanding the phenomenon of violence againstwomen, femicide, as its most severe form, and the reaction of the whole society to mentioned phenomenon are of great importance in order to find adequate preventive protection mechanisms. Femicide is a murder ofwoman done by man, motivated by hatred towards women,misogyny, contempt, as well as by feeling ofownership and supremacy. It is important to note that femicide, as a rule, is not an isolated phenomenon, somethingwhich happens suddenly, ad hoc, as a consequence of affect. Femicide is the last stage of acontinuous violence to which women are exposed by men, but indirectly, throughpassivity from the wider social community and society as a whole (Ignjatović, 2011. p. 25).

Due to the multidimensionality of the concept of violence against women, the consequences of the same do not have tobear only the victims of the violent act, but also family members who have been exposed to violence as witnesses. Although official, accurate and publicly available records of all forms of femicide are still not available, the data available to some NGOs shows that the total number of murders of women in the family-partner

context in previous years has remained unchanged.The seriousness and complexity of this problem, the incalculable consequences that it has both for the victim, and to family members, as well to society as a whole, has pointed out the need for a comprehensiveperceiving and understanding of the problem of violence against women. By analyzing of legal regulations in The Republic of Serbia, we will try to determine whether, and to what extent, the legislative framework is readyto adequately respond to all forms of violence against women, and particularly to the prevention of femicideas the most severe form of gender-based violence.

2. The concept of femicide, risk factors and the situation in the Republic of Serbia

Violence against women is a global phenomenon present in all cultures and socialsystems. The most severe form of it is femicide – "gender-based violence or violencedirected at women based on their gender identity, gender roles and unequalpower relations within the social context"(Konstantinović Vilić, Petrušić & Beker, 2019, p. 67).

The term "femicide" was first defined by Diana Russell as "killingwomen by men out of hatred, contempt, pleasure or a sense of ownership over women,that is, sexism" (Caputi & Russell, 1990, pp. 34–37). In the book Femicide in the Global perspective. Russell and Roberta Harmes extended this term. They pointed out that it refers to "the culmination of violence against women thatcovers a wide range of verbal and physical abuse such as rape, torture, sexual slavery, incestuous and non – domestic sexual abuse of children, physical andemotional abuse, sexual harassment, genital mutilation, unnecessarygynecological surgeries, forced heterosexuality, forced sterilization, forced motherhoodetc.," done not only by current or former partners, but also by other men.

In order to achieve the best possible prevention of intimate partner's femicide, it is necessary to find out what are the risk factors for its occurrence. The primary factor is frequency andseverity of physical violence before the murder (79% of femicide victims had been abused beforedeath by her partner). In addition, stalking, possession and threats of weapons are important,as well as a coercion to sexual intercourse, abuse of psychoactive substances, unpleasant experiences during childhood, perpetrator suicidal tendencies and history of partner violence (Konstantinović Vilić, 2013, p. 45). Particularly at risk are those women who decide to end their relationship and get separated from a violent intimate partner. A special term is used for this pattern of violence

- attack during separation ("separation assault") which refers to all forms of abuse of women whohave decided to leave the partnership (Konstantinović Vilić, Petrušić & Beker, 2019, p. 88). Therefore, the predictability of femicide in intimate partnerships can be viewed asa consequence of many years of unreported and unprocessed domestic violence.

Research shows that in the past few years, there has been a noticeable increase in the number, in the world, of womenmurdersdone by a current or former partner or other family member.[1] Nevertheless, most countries do not prescribe femicide as a separate crime, but assume that women and men are equal before the law and that it is unnecessary to separate victims by gender andcriminalize the murder of a woman as a special form of murder. The Republic of Serbia also belongs to this group of countries. Criminal legislation based on a different approach treats the female gender of the victim and the gendermotivated murder as an obligatory aggravating circumstance when sentencing (Argentina and Venezuela treat femicide as a special form of aggravated murder). In large numbersLatin American countries criminalize gender-based murder of women as independentcriminal offense, that is, as a femicide or feminicide (Batrićević, 2016, pp. 436–438).

A big obstacle in understanding the scale of this problem in Serbia represents the non-existence of clear records of all cases of femicide, whether it is or is not a consequence of violence towards women in family, partnership and / or non-partnership relations (Pavlović, 2019, p. 97). Under the auspices of the Autonomous Women's Center from Belgrade, monitoring the number of people killed in terms of femicidehas been done/followed by the Women against Violence Network since 2010. According to the Report on Femicide in 2019, there were 26 cases of murder of women, (Femicide: murders of women in Serbia: Report for 2019), while in 2020, the media reported 26 cases of femicide, and the murder of 5 women was suspected as a femicide. In previous reporting years, every third woman applied for theassistance to one of the competent institutions before she was killed (police, center for social work,prosecution or several institutions at the same time), while this is now the case with every seventh. The constant downward trend in the number of reports of violence that preceded femicide suggests that it ispossible that trust in the work of institutions is declining, that violence is not recognized and reported, or on the other hand the violence is recognized, but it is kept silent

[1] UNODC (2018). Downloaded 2020, September 29 from https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18_Gender-related_killing_of_women_and_girls.pdf

(Femicide: murders of women in Serbia: Quantitative-Narrative Report for 2020).

An additional problem in our country represents the media, which in cases of femicide mostlyreports sensationally and often violate moral and professional codes in reporting,while a complete interpretation of this problem, which society is still silent about, does not exist.Focus is put mostly on the perpetrator and his reasons for the murder, not mentioning the perennials of the violence to which the victim was mostly exposed. Femicide is thus presented as an incident, not as a predictable sequel and a tragic finale to a long-running male violence overwomen, which as such exists as part of traditional gender roles and relationships (Mršević, 2015, p. 18).

In addition to recognizing risk factors, for the prevention of femicide, it is necessary to determine and to analyze the gender, social and economic marginalization of women, the existence of the formerdomestic violence and its sanctioning. However, the most significant is the intervention of the stateauthorities, adequate application of the law, as well as urgency in the response of all entities that need toprovide assistance to victims of violence. One of the most important measures that the Republic of Serbia has taken as the aim of reducing domestic violence is to enact the Law on Prevention of Domestic Violence.

Therefore, in further work, along with the analysis of criminal and family law protection against domestic violence, an analysis of the application of the mentioned law in the context of femicide prevention will be performed.

3. Femicide prevention in the Republic of Serbia - legislative framework

Legal protection against domestic violence began in 2002, when the Assembly of the Republic of Serbia passed the Law on Amendments to the Criminal Code of the Republic of Serbia, which in Art. 118a envisaged domestic violence as a new criminal offense.Adopting the Criminal Code (hereinafter: the Criminal Code) in 2005, which entered into force in 2006, the same act was incriminated in Art. 194 in Chapter XIX, in the group of criminal offenses againstmarriage and family. Also, the current Criminal Code provides five forms of this criminal offense, unlike the earlier legal text which provided four forms. As a special form ofmurders during domestic violence, the mentioned CC recognizes aggravated murder provided by Art. 114, § 10, as the murder of a family member who had previously been abused. As in the above CC of the Republic of Serbia there is no special incrimination

of the criminal offense of femicide, it can be treated as aggravated murder committed from other low motives, from Art. 114, para 1, item 5. According to Article 54a of the Criminal Code: "If the criminal offense is committed out of hatred due to race and religion,national or ethnic affiliation, gender, sexual orientation or gender identity of anotherpersons, that circumstance will be assessed by the court as an aggravating circumstance, unless it is prescribed ascharacteristic of the crime." The fact that gender was introduced as one of the reasons for the manifestation of hatred towards the victim creates conditions for obligatory stricter sanctioning of the perpetratorsmanaged by misogynistic and sexist motives (Batrićević, 2016, p. 443). Femicide would, likea separate crime, cover any gender-motivated deprivation of a woman's life, done it intentionally or negligently by the perpetrator, provided that it occurred as a consequence of gender motivated violence (Konstantinović Vilić, Petrušić, Becker, 2019, pp. 97–98). In that case the life of a woman would be the object of protection, and the act of execution would be the same asin the crime of murder. Of the subjective elements, on the part of the perpetrator would be pointed out as a motive the existence of the hatred of women. In the case of femicides, it is very important to determine the motive of the execution, because that would prove that at the moment of undertaking the act of execution, the perpetrator actedguided solely by hatred towards the group to which the victim belongs, and not by personal motives (Ibid.,p. 98). Misunderstanding the emerging of femicide as the most extreme form of gender-based violence towards women and murder motivated by hatred, by sense of ownership and superiority of men towards women, may be the reason why femicide is not seen as a specific form of murders. Such attitudes can be a brake on future work to improve incriminationfemicide as a special crime against life and body or as a special form of gravemurder, which would significantly improve the possibilities for its suppression (Petrušić, Žunić & Vilić, 2019, p. 57).

In addition to criminal law, family law protection from violence is also very important, within which a special place is occupied by the Family Law (hereinafter: FL), passed in 2005. Prohibition of domestic violence and the right to protection from domestic violence are regulated by Art. 10 of the said FL, while the concept and characteristics of domestic violence and its perpetrators are regulated by Art. 197 of the said FL. The connection between family law and criminal law protection against domestic violence was achieved by the provision of paragraph 5, Art. 194 of the said CC, where by violating some of the protection measuresfrom domestic violence, prescribed by Art. 198, paragraph 2 of the said FL, the perpetrator is responsible fora special

form of domestic violence. However, in terms of the term "family member", there is a visible difference between thecriminal and the family law. The interpretation of criminal law is much narrower (Art. 112, para. 28 of the said CC) from the family law interpretation (Article 197, paragraph 3 of the said FL). Therefore, if there is a violation of a certain measure of protection against domestic violence, which is according tospecified FL determined for the protection of a person who according to the mentioned CC is not considered as afamily member, persons who are not family members according to Art. 112, para. 28 will nevertheless become so (Jovanović, 2014, p. 251). The provisions of the said FL assigned the public prosecutor's office a preventive role, whilethe police has not been assigned any role in protecting against domestic violence.

In the Republic of Serbia, in 2016, the Law on Prevention of Domestic Violence was passed (hereinafter: LPDV), and entered into force on June 1st, 2017. The ratification of the Istanbul Convention preceded it. The Istanbul Convention overarching goal was to protect the rights of victims of violence, primarily women, but also other victims of domestic violence. LPDV represents a *lex specialis* in relation to the regulations that regulated this matter so far. The new LPDV regulates the organization and actions of state bodies for the purpose of better prevention and urgent, timely andeffective protection and support for victims of domestic violence. In order to prevent femicide, the most significant novelties envisaged by the LPDV are urgent measures (a measure of temporary removal of the perpetratorfrom the apartment and the measure of temporary prohibition to the perpetrator to contact the victim of violence and approach her) which are being pronounced by the competent police officer; mandatory risk assessment of recurrence of violence; mandatorycoordination and cooperation between competent services and records of cases of violence. Also,the disciplinary responsibility of judges, public prosecutors and deputy public prosecutors has been establishedfor failure to act within the deadlines specified in this law.

The novelties introduced by the LPDV are aimed at preventing possible domestic violence inits initial stages and prevention. "From the aspect of a family member – "possible victims", LPDV is emphatically preventive, and from the aspect of a family member – a "possible perpetrator of violence" emphaticallyrepressive" (Kolarić & Marković, 2018, p. 50). Because there is no definition of the possible perpetrator given, "it logically follows from the notion of a possible perpetrator that its perpetrator can commit domestic violence, but not necessarily. It would certainly be logical to use the term "possible victim" for the domestic violence victim as well. Otherwise, it is

concluded that the perpetrator may commit the act, but also may not, but in both cases the victim is victimized" (Ristivojević, 2017, p. 10). Art. 3 para 2 of the LPDV defines the immediate danger of domestic violence. This legal solution isimprecise, because the provisions on the imminent danger of domestic violence are "based on intent that the perpetrator commits violence, and it is generally known that intent in law is the most difficult to prove"(Jugović, 2017, p. 421).

Art. 4, paragraph 1 of the LPDV lists the criminal offenses to which the provisions of this low applies, where the point 18 refers to other criminal offenses, if the criminal offense is a consequence of domestic violence. Paragraph 2 of the same article prescribes that the Law also applies to the provision of protection and support of victims of crimes under paragraph 1. Bearing in mind that the goal of emergency measures is to providevictims of domestic violence with prompt and effective protection, according to the above provisions "it turns out to be providedprotection for all victims of these crimes, although the courts refuse to extend the emergencymeasures in case there are listed criminal offenses, when the perpetrator and the injured party cannotconsidered family members according to LPDV" (Kolarić & Marković, 2018, p. 53).

In the context of femicide prevention, particularly important provisions of the LPDV are those that regulate the procedure for preventing domestic violence: reporting and recognizing of domestic violence (Art. 13), the conduct of the competent police officer (Art. 15), risk assessment (Art. 16), emergencymeasures (Art. 17), the conduct of the public prosecutor (Art. 18) and the conduct of the court (Art. 19). Although LPDV prescribed that everyone must report domestic violence or the imminent danger of it, there is nowhere a sanction specified in case it is not reported. Risk assessment is performed by the competent policeofficer who, if he/she establishes an imminent danger of domestic violence, issues an orderby which the urgent measures on the perpetrator are issued/imposed (Article 17). However, the same Law in Art. 15 said that urgent measures should be imposed to "possible perpetrator". Thus results, "bringing, retaining and assessing the risk refers to the possibleperpetrator of domestic violence, and urgent measures are imposed on the perpetrator"(Ibid., p. 58). By order both emergency measures can be imposed. The emergency measure lasts for 48 hours from the delivery of the order and the court can extend it for another 30 days. Risk assessment for relevant police officers will be easier,if the person appears as a perpetrator of the crime of domestic violence. However, this question ismuch more sensitive in cases where the crime was not committed but a misdemeanor, or

when perhapsno criminal offense has been committed, but the risk must be assessed on the basis of certain circumstancesand perhaps impose an emergency measure on a person fromwhomthere is a danger of being in the immediate vicinity of the domestic violence thatis to be committed for the first time (Bošković & Puhača, 2019, p. 36). Becausethe competent police officer has the legal authority to bring the possible perpetrator intothe competent organizational unit of the police, "the question arises as how to restrict freedommovements of a person for whom there is no suspicion that he has committed a criminal offense, but is detained frompreventive reasons during the assessment of the risk of domestic violence" (Kolarić & Marković, 2018, p. 55).

Another novelty introduced by the LPDV is cooperation in preventing domestic violence (Articles 24-27), by introducing the following two institutes: Liaison Officers and Coordination and Cooperation Groups. The persons designated for the connection, exchange information and data that are important for the prevention of domestic violence, detection, prosecution and trial for certain crimes determined by this law,on a daily basis, as well as data important for providing protection and support to victims of domestic violence and victims of criminal offenses determined by this law. The Coordination and Cooperation Group considers eachcase of domestic violence that has not ended with a final court decision, also cases whenprotection and support for victims of domestic violence and victims of crime determined by this law should be provided with, develops an individual plan for protection and support of victims and proposes to the competent publicprosecution measures to end court proceedings. The LPDV also envisages that records regarding the cases of domestic violence should be kept (Art. 32), while the Council for the Suppression of Domestic Violence, formed by the Government, monitors the implementation of this law, improves coordination andeffectiveness of prevention of domestic violence and protection from domestic violence.

Although it seems that the powers of the competent police officers to impose urgent measuresincreased the effectiveness of protection against domestic violence, the analysis of the same speaks differently. Just a monthsince the entry into force of the LPDV, two cases of femicide have been reported in Serbia, in which two women and one minor child were killed. The first case took place in front of the social work center's premises, and other in the premises of the center for social work. Both cases of violence wereereported to the competent institutions, and their non-response is justified by the poor position within the system. After the control carried out by the competent Ministry of

Labor, Employment andsocial issues, it was concluded that in the first case of femicide, omissions were made in the work of the centerfor social work, which is why the director was replaced, and against seven employees were initiated disciplinary proceedings (Lacmanović, 2019, pp. 49–50). By analyzing the application of LPDV in just one year, a total of 24,996 emergency measures were imposed, of which 17,119 were temporary prohibitions on the perpetrator to contact and approach the victim of violence, and 7,877 cases were temporary removals of the perpetrator from the apartment (Bošković & Puhača, 2019, p. 37). Emergency pronouncedmeasures were extended in 14,126 cases, meaning that they were, on average, extended in every second case (Ibid., p. 41). Especially interesting is the provision of LPDV, where the person who violatesan emergency measure imposed or extended on him shall be punished by imprisonment for a term not exceeding 60 days. However, the practice has shown that "misdemeanor courts resort to imposing fines(about 5% of convictions), applying Art. 43, para 1, item 2 of the Law on Misdemeanors"(Kolarić & Marković, 2018, p. 64).

Although from official statistics it can be seen that the number of reported cases of violence inSerbia is growing, that number is just the tip of the iceberg. In most cases, the victim still does notreport violence, which makes it impossible to react preventively and provide adequate protection. That is why it is necessary to educate the public about the importance of reacting to all types of violence, and especially togender-based violence against women (Lubura, 2017, p. 127).

Council of Europe Expert Group on Violence against Women and Domestic Violence (GREVIO) published in January 2020 its first evaluation report onimplementation of the Istanbul Convention in Serbia. The Report highlights the positive impact of the LPDV had onprocessing the cases of domestic violence in Serbia, as well as the fact that the LPDV and additionaldocuments and policies have led to an increase in the scope of training and specialization in all legalprofessions and competent bodies of internal affairs. The CC is also amendedin recent years to be more in line with the requirements of the Istanbul Convention, and forms of violence such aspersecution/stalking (138a), forced marriage (art. 187a) and female genital mutilation (art. 121a) noware also incriminated. However, there are still difficulties in ensuring their implementation inpractice, largely due to a lack of understanding of the seriousness of these forms of violence, their trivialization inmedia and public discourse. According to the report, condemnation rates for most forms of violence againstwomen are extremely low, and the reasons for this range from a low level of reporting tolack of instructions on

how to prepare a case for court and insufficient training for recentlyintroduced crimes (Ibid.).

Article 26 of the Istanbul Convention (2011) obliges the parties to take the necessary legislative or other measures and ensure that while protection and support services are provided for the victims one should take into account the rights and needs of child witnesses of all forms of violence involved and stated in the mentioned convention, with due respect for the principle of the best interests of the child.And despite the fact that thechildren are often witness to the violence that their mothers survive, even femicide, in Serbia stillthere is no systemic protection and support for children witnessing all forms of violence silent (Femicide: murders of women in Serbia: Quantitative-Narrative Report for 2020). This indicatesthe need to always treat child witnesses of femicide as victims of violence and therefore their need to be provided with specialized support services. GREVIO appeals to the urgent need to providethat all cases of violence committed by a violent parent be taken into account in determining rightson guardianship and visits.

Although femicide, as such, is not recognized in the legislation of the Republic of Serbia, for the first time, concrete prevention measures that can prevent its occurrence are prescribed by the LPDV, and time will tell whether and to what extent they will be applied and give the desired effects (Lubura, 2017, p. 128).

4. Concluding remarks

Based on all the above, we can conclude that the phenomenon of femicide is a very complex social problem, the solution of which requires a comprehensive approach. With the aim of its prevention and resolution, it is necessary to take into account the wider social context in whichit occurs, with special reference to the causes. By analyzing the legislative framework of Serbia in the field of prevention of violence against women and femicide as its most severe form, as well as the research results in this area, it can be concluded that in previous years, efforts have been made in order to prevent this phenomenon. Numerous amendments to the laws governing the state have been passedtried to harmonize its regulations with the provisions of the Istanbul Convention. Still, data on the numberof women killed on an annual basis shows that gender-based violence is still present ina large percentage and that there is still no adequate response from the state in terms of femicide prevention.

The starting point for monitoring femicide in Serbia is the establishing of an official, precise andpublicly available records of all forms of femicide

(with data collection and comparisonfrom all existing sources) in order to adequately shape the legislative framework as wellbased on locating the scale of this problem. In order to prevent femicide, but also all other forms of gender-based violence, more work is needed aiming to empower victims to report any form of violence and educating the whole society on this topic, both children through the education system and employees who encounter this issue within their work (police officers,health workers, workers of social work centers, judges, prosecutors, media, etc.). Onlytimely response to all types of violence enables preventive action and provision of the adequate protection. In order to oblige state and other bodies, organizations and institutions toimmediately report any knowledge of violence, as well as to prevent the inaction of judges, publicprosecutors and deputy public prosecutors within the deadlines set by law, the LPDV listed the foresaw omissions as the misdemeanors, i.e. the disciplinary offenses.

Existing criminal and civil law norms have sanctioned the act of domestic violence after its execution, while the adoption of the LPDV in the Republic of Serbia enabledpreventive action of state bodies in cases when an act of violence has not been committed yet, but the imminent danger that it will be carried out exists.

The LPDV of the Republic of Serbia does not mention children who witness violence in the context of indirect victims of violence. Recognizing a child who witnesses domestic violence as an indirect victim of violenceis very important, because that is the only way to adequately react to psychological violence child suffers, to help him/her overcome the trauma, but also to see the true dimensions of domestic violence.

The influence of strong, deeply-rooted customs and cultural models that justifydifferent types of violence, and even the murder of women, is one more of a reason to criminalize femicide as well as a separate criminal offense in the legislation of the Republic of Serbia. Femicide incrimination asseparate criminal offense in the criminal law of the Republic of Serbia is particularly important as the aim of sending a message about the social unacceptability of this behaviour. Data on the decline in the number of violence that preceded femicide registration, to the competent institutions certainly indicate that it is necessary to determine the causes for non-reporting of violence and strengthen trust in institutions besides the improving of the legislative framework and education at all levels.

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PREVENCIJA FEMICIDA U SVETLU PRIMENE NOVIH ZAKONSKIH REŠENJA U KRIVIČNOM PRAVU REPUBLIKE SRBIJE

REZIME: U savremenom društvu nasilje u porodici je društveno neprihvatljiva pojava. Najčešći oblik nasilja u porodici je nasilje nad ženama, dok se kao najteži oblik nasilja nad ženama izdvaja femicid – rodno zasnovano ubistvo. Jedna od mera koju je Republika Srbija preduzela u cilju smanjenja nasilja u porodici jeste donošenje Zakona o sprečavanju nasilja u porodici. U cilju prevencije femicida, najznačajnije novine predviđene zakonom su hitne mere koje izriče nadležni policijski službenik, obavezna procena rizika od ponavljanja nasilja, obavezna koordinacija i saradnja između nadležnih službi i evidencija slučajeva nasilja. U ovom radu se osim krivičnopravnih i porodičnopravnih mera kojima se pruža zaštita od nasilja u porodici, analiziraju i rezultati primene tih mera u kontekstu prevencije femicida.

Ključne reči: *nasilje u porodici, femicid, Zakon o sprečavanju nasilja u porodici, hitne mere.*

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AGENCIFICATION OF PUBLIC ADMINISTRATION IN THE TRANSITION PROCESS

ABSTRACT: The democratization of the countries in Central and Eastern Europe (CEE) has also included the reform of inefficient public administration. At the same time, these reforms have been accompanied by the aspiration for a membership in the European Union. The administration has been transformed according to a number of principles that make up the framework of the European administrative area. Along with these processes, there were established public agencies, a body taken over from the developed countries, and created during the reform of the New Public Management. The countries in transition have gone through an extensive and rapid process of agency. Due to a high level of autonomy after the formation of agencies, i.e., after certain tasks have been transferred to their competence, it is difficult to effectively control their work. The public interest is threatened by the non –transparency of these bodies. Their existence also affects the basic principles of the European administrative space and turns the reform against itself. It is certain that the mass establishment of a new body in the system of public administration brings uncertainty in terms of effects. It has turned out that foreign experts, without knowledge of the administrative tradition of the socialist countries, as well as domestic politicians who wanted accelerated reform, also contributed to that.

Keywords: The *European administrative space, public agencies, the European Union, reforms, transition.*

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1. Introduction

The democratization of Central and Eastern Europe (CEE) at the end of the 20th and the beginning of the 21st century implied a process of transition to functional institutions. It was necessary to carry out reforms over the civil service tailored to the principles of Marxism and Leninism (Verheijen & Rabrenović, 2001), such as: state administration subordinated to political structures, harmonization of employment conditions for all workers, creation of a parallel bureaucracy. However, the implementation of changes was not efficient enough and they were often abandoned before they were completed (Šević & Rabrenović, 1998). We link these changes in governance directly to the processes that changed public administration in developed countries in the second half of the 20th century.

Prior to 1979, public administration was characterized by a bureaucratic type of organization, however, the changed needs of society required new institutional arrangements. The answer is found in new principles – professionalism, depolitization and expertise. Today, we call the changes that started from UK in the form of rethinking the work of the government and the entire administration the New Public Management (NPM). The goal of these reforms, in the first place, was to reduce the role of the state in the economic sphere, but also to redefine the then concept of public administration (Trbović, Đukanović & Knežević, 2010). Developed countries have increased the quality of services and efficiency of work through NPM, and in the wake of that, modern management systems are characterized by the aspiration to achieve an organized and efficient society (Ibid).

A decade later, in Central and Eastern Europe, countries are moving towards the same goal – reforming cumbersome and inefficient public administration. At the same time, these reforms are accompanied by the aspiration to join the European Union (EU). In the light of the new changes, EU created a series of principles of public administration that form framework of the European administrative space and thus has a significant impact on the development of governance in countries aspiring to membership in the Union. The most important mechanism through which the EU provides assistance in the process of transition and institution building is SIGMA (Support for Improvement in Governance and Management in Central and Eastern European Countries). This initiative established the very concept of the European administrative space and the principles on the fulfillment of which the accession of states to the EU depends. In this way, new institutional forms have been added to the public administration inherited from the

decades–long communist government through the process of transition and Europeanization, such as the public agendas that are the subject of this paper.

Eriksen and Solumoen (2005) recognize the establishment of agencies outside ministries as the most important organizational innovation from that period. This process of delegating authority to bodies outside the organizational structure of ministries and their rapid and often excessive establishment is called agencification. The term agency is taken from the English language, describing the emergence of a large number of agencies to which the competencies of ministries have been transferred for the sake of efficiency. Agencies belong to the group of regulatory and control bodies entrusted with tasks previously performed by the traditional state administration. In formal sense, they are autonomous and independent bodies whose work must not be influenced by external factors.

However, the context in which agencies were created in Central and Eastern Europe differs from the political and economic context that led to agencification in Western Europe and elsewhere where the managerial approach developed in response to the entrenched Weberian type of governance (Musa, 2014, p. 169). Countries in transition have implemented agencies in parallel with democratization processes, establishment of free market, and other administrative reforms.

2. Agencification within transition

New institutional forms were introduced at different speeds, and the application of New Public Management standards varied from state to state.

An additional impetus for change at the end of the 20th century was the determination of the former socialist republics towards membership in the European Union. The EU has sought to speed up the transition process by providing assistance, including in the area of public administration reform inherited from the socialist regime. Although the presence of external experts, whether economic or political, is generally considered to facilitate transition processes, the impact of these actors on governance reorganization varies considerably (Eriksen & Solumsmoen, 2005).

Whether the state is able to profit from foreign aid depends on both domestic and foreign actors. Insufficient expertise has been identified as a major obstacle to reforms in the former socialist republics (Ibid). Those countries had difficulty identifying problems and identifying their own needs. International experts have had difficulties with coordination and lack of interest, and an aggravating circumstance for the expected reforms is that they are often not

sufficiently familiar with domestic norms and characteristics of society and the system. The deep–rooted influence of the former structures was also reflected in the way of thinking of many residents and made the reform process more difficult.

Reforms in different countries have led to different results, different levels of transformation, mainly due to different reform concepts, different administrative traditions, and implementation mechanisms. The role of administrative tradition has proved important in the countries of Central and Eastern Europe, where during the transition, with the help of international organizations and the EU, a special type of *one–size–fits–all* reforms was initiated, which produced similar negative consequences. In that sense, the introduction of managerial values in the political and administrative system, which lacks fundamental democratic principles of legality, rule of law, responsibility, transparency, and openness, manifested itself as counterproductive (Milenković, 2013, pp. 137–138).

Ignoring restrictions and taking ready–made solutions from the administrations of developed countries has led to limited effects of reform and insufficiently implemented solutions, such as public agencies, whose analysis is the subject of this paper. Given that there was no clear strategic approach and vision of public administration when establishing agencies, they were created as needed. In relation to the countries where the agencies were established, in CEE, legal and procedural control took precedence over the control of results and performance, which are at the core of the agency model, which led to weak control mechanisms, lack of autonomy and low transparency.

The reason for rashly establishment of agencies can be found in external and internal pressures to end the transition process as soon as possible. Such reforms have led to a situation where new institutional forms existed, but often without the most important values of transformation, unclear priorities and without a transparency. The introduction of the agency model in countries in transition, as a completely new type of organization, has not always been accompanied by the adoption of management techniques, the establishment of control mechanisms and the provision of adequate autonomy. This paper will show that administrative reforms and the creation of agencies primarily were part of the institutional adjustment to the European Union on the path to membership, as the EU has emerged as a central authority in the countries of CEE in terms of public administration reform.

3. The role of the European Union

During the preparations for EU membership, countries build capacity through preparation, coordination and management of accession process and implementation of the *acquis communautaire* (Todorović, 2012). As there is no scientific model of administration and no standard for public administration, this gap was filled by the European administrative space, which was created as a result of the enlargement of the European Union. During accession, candidate countries are required to meet minimum standards regarding administrative reform, these standards are known as SIGMA principles. Although these principles are not formally binding, they represent standards that need to be met in order to strengthen the institutional capacity of Member States and candidates (Ibid). Precisely these principles represent the basis of the "European administrative space" and their application achieves the reliability of the state administration system (Todorović, 2009). The goal is to reach the level of reliability of the "European administrative space" through the implementation of the elements of the SIGMA principles.

Prior to the fifth enlargement of the EU, better known as the "big enlargement", public administration issues did not attract attention. Nevertheless, when countries of Central and Eastern Europe have begun the process of joining the European Union, the issue of the existence of administrative capacity has become one of the most important for the process of European integration. At the summit in Madrid in 1995, it was first mentioned that candidate countries should adjust their administrative structures in order to implement the obligations arising from membership (Todorović, 2009).

Numerous studies have identified domestic administration and administrative tradition as key to adapting to EU rules. The key challenge that post–communist states had to deal with is the inherited "real–socialist" state administration (Todorović, 2011, p. 203). Reforming the old administration was not an aimfor itself, there was a need to create capacity to effectively implement EU commitments. For that reason, the application of the SIGMA principle enabled the reliability of the state administration. Therefore, candidate and potential candidate countries should organize their administrations so that they reach the level of reliability of the European administrative space (Ibid, p. 205).

Jacques Funius (2006), in SIGMA documents, links legally constituted states to clearly defined laws that form ministries, state bodies and agencies. This means that each administrative body must undergo examination and supervision by other institutions or bodies. A very important issue in this context is the size of the civil service management units, where we come to the popular agency.

Agencies are understood as a solution for strengthening the weakened administration, increasing the salaries, reducing state regulation, but also as an institutional model imposed by the EU. The establishment or restructuring of agencies is a formal obligation of the candidate countries for membership and fulfillment of the conditions for EU accession, which indicates the action of the model of external incentives in the institutionalization of the agency model. In addition, Europeanization takes place through conditionality, because the closing of negotiation chapters depends on the fulfillment of obligations (Staničić, 2016, p. 70). In order to ensure implementation, membership negotiations include in some cases the obligation to form an agency model of the organization, thus anticipating efficiency, expertise, a minimum level of politicization, and connectivity with sister European agencies (Musa, 2014, p. 173).

The result of the reforms is superficial and peripheral because it is mostly about fulfilling the formal conditions of accession to the European Union, and not about significant transformations of collective values. Such institutional changes induced by the EU in transition countries are described as 'shallow Europeanization' (Goetz, 2005; Schimmelfennig and Sedelemeier, 2005, 2006; Grabbe, 2003 according to Musa, 2014, p. 173) or 'Eastern Europeanization' '(Héritier, 2005 according to Musa, 2014, p. 173), which due to its superficiality has a higher potential for reversibility (Goetz, 2005 according to Musa, 2014, p. 173). The EU is the generator of the agency process because its institutional architecture and the character of the regulatory state encourage the creation of European agencies, as well as their counterparts in the member states. The formation of a network of European and national agencies in the same area ensures the effective implementation of European policy (Musa, 2014, p. 173).

The global trend of agencification, necessarily cause the transformation of classical state administration. The formation of agencies in different institutional forms has led to different definitions of agencies, their forms and internal design, as well as different relations of the agencies with politicians, public administration, users, and the market.

4. Control and autonomy

After formation of agencies, i.e., after certain tasks pass into their competence, it is difficult to effectively control the work of agencies. In these circumstances, agencies exercise their discretion and employ a large number of people to whom they pay high salaries, while at the same time not submitting accurate (or even no) reports on the results of their work.

Public agencies are controlled by the ministries in whose jurisdiction are affairs public agency is in charged for. The question arises as to how to strike a balance between control of labor and the autonomy they enjoy? Depending on whether these are agencies established to perform professional, development or regulatory work, differs form of work control.

Supervision over the work of the public agency in the entrusted affairs is performed by the ministry in whose scope the affairs of the public agency are. Vertical responsibility implies the control of agencies by institutions that are hierarchically superior to them. In order to successfully implement horizontal accountability, citizens, media and other stakeholders must have specific data on their work.

As a rule, the countries of Central and Eastern Europe opt for "semi–autonomous agencies" to perform executive tasks. Semi–autonomous bodies are organizations within the government and state administration that oblige public affairs at the central level, do not have the status of a legal entity, but have a certain level of autonomy in management. In the former socialist states, there are, among others, "autonomous" agencies, which have the status of a legal entity and autonomy in management. These agencies were more popular in countries in transition than semi–autonomous organizations until the first decades of the 21st century, but since then the number of semi–autonomous organizations has increased (USAID, 2018).

Detailed and constant control of public agencies is necessary for several reasons. Transparency is the value of democratic societies, and it gives rise to responsibility. It is very important that citizens are familiar with the work of agencies and have opportunity to hold them accountable. Another reason is certainly to ensure that agencies implement government policies and act in accordance with their competencies. That is why it is important that agencies regularly report on their work to both Government and public.

According to the doctrine of public management, public sector organizations will be of better quality and more efficient if managers are given a high level of autonomy in management and operational decisions (Ahlbäck Öberg & Wockelberg, 2020). Therefore, the autonomy of the agency is conditional - freedom comes with taking responsibility for achieving results (Ibid).

Today, the governments of Central and Eastern European countries are more likely to opt for agencies with a lower degree of autonomy, and these executive agencies are kept much closer to the central government than before. This can be partly explained by the advent of the second generation of reforms known as "deagencification" or "consolidation of power". States are implementing this reform to regain some of the control and coordination they have lost due to the excessive creation of special agencies. This trend has not

been recognized so far in most of CEE countries, but it could serve as a model for future agency reforms (USAID, 2018, p. 3).

5. Transparency

De jure transparency is a legally prescribed obligation for the agency to make certain content available to the public. If we take into account that agencies can publish more data than is legally required, *de–jure* transparency is a narrower concept of transparency than *de–facto* transparency.

Countries in transition have gone through an extensive and rapid process of agencification. The legal framework of the European Union is one of the main reasons for the establishment of independent agencies (as a condition in the accession process). These reforms took place in conditions of control of economic and social resources by political parties, politicization, and centralization. The public perception of the work of these bodies is mostly negative. Agencies are often portrayed as institutions that have no purpose other than to exploit the interests of political elites instead of advancing the interests of citizens. The reason for such public attitudes can be found in the fact that very little is known about the work of public agencies, one of the reasons for this is the lack of public debate and low level of visibility of these agencies (Tomić et al., 2015, p. 20). The media usually follow the work of agencies only when it is negative and target of criticism from politicians and the professional public, or when a public agency becomes the center of a scandal.

Insufficient resources can be one of the reasons for the lack of transparency. However, transparency is not necessarily associated with higher monetary expenditures, e.g. Maintaining a website does not require a lot of resources, but a commitment and consistency that would allow interested actors to access information about agency work easily and quickly. One of the ways to increase trust is by sending newsletters by e–mail, providing information on activities, publishing budgets, work reports, external audit reports, printing materials on the work of the agency, etc. The closest forms of providing information on the work of the agency to democracy are holding debates, round tables, and public debates on issues within the scope of work of the public agency.

6. Conclusion

When socialist states began to transform the entire system, Western countries invested many resources to accelerate these processes. Unfortunately, in some cases this was not effective. Insufficient knowledge of domestic public

administration and legal tradition has led foreign experts to implement ready–made solutions in stumbled countries. What has proven to be a bad practice over the years– some of the PAR elements have not fully fulfilled their purpose. Thus, public agencies are bodies that are characterized by non–transparency and insufficient control, they are unknown and irresponsible to citizens.

During their building into democratic societies, these countries also started the process of joining the EU. Thus, the transition process becomes a process aimed at joining the EU. The dilemma remains whether the reforms were aimed at improving the quality of service delivery, transparency, effectiveness, etc. or EU membership? Although one does not necessarily exclude the other, the formal fulfillment of the requirements for joining the EU is not expedient, because it does not essentially contribute to improving the quality of the elements of public administration.

Another problem is that in countries in transition, reform was encouraged from the top, that is, the political structures tried to "catch up with the West" after the regime change. Unlike this transitional public administration reform, in the countries where the new public administration has developed, the demand for public sector reforms came from people employed in public administration, i.e., of those who know best its shortcomings, limitations, and weaknesses.

Process of deagencification is not necessary, it is more important to increase-matter of responsibility and involve the population in the review of the model of autonomy and control. If we bring public agencies closer to the citizens, make them transparent and accessible, we will reduce distrust in these bodies and potentially contribute to a greater degree of branching out of the competencies of ministries. This is a practice that should not be avoided, but should be actively and timely implemented, taking special care of control and the public good.

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AGENCIFIKACIJA JAVNE UPRAVE U PROCESU TRANZICIJE

REZIME: Demokratizacija država u centralnoj i istočnoj Evropi sa sobom je donela i reformu neefikasne javne uprave. Ove reforme istovremeno su praćene težnjom ka članstvu u Evropskoj uniji. Uprava se transformisala

prema nizu principa koji čine okvire Evropskog upravnog/administrativnog prostora. Ovi procesi praćeni su stvaranjem javnih agencija, tela preuzetog iz razvijenih država, nastalog tokom reforme nove javne uprave. Zemlje u tranziciji su prošle opsežan i brz proces agencifikacije. Zbog velikog stepena autonomije nakon formiranja agencija, odnosno nakon što u njihovu nadležnost pređu određeni zadaci, teško je efikasno kontrolisati njihov rad. Javni interes ugrožen je netransparentnošću ovih tela što ugrožava osnovne principe Evropskog upravnog prostora i reformu okreće samu protiv sebe. Izvesno je da masovno osnivanje novog tela u okviru sistema javnog upravljanja unosi neizvesnost u pogledu efekata. Pokazalo se da su tome doprineli i strani eksperti, bez znanja o upravnoj tradiciji socijalističkih zemalja, kao i domaći političari koji su želeli ubrzanu reformu.

Ključne reči**:** *evropski upravni prostor, javne agencije, Evropska unija, reforme, tranzicija.*

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THE CONTEXTUALIZATION OF THE PROVISIONS OF THE LAW ON GENERAL ADMINISTRATIVE PROCEDURE WITH A SPECIFIC OVERVIEW ON THE CONCEPT OF AN ADMINISTRATIVE CONTRACT

ABSTRACT: Based on the premises that public administration should serve as an open, digitally developed and work-transparent public service, the aim of the paper is to analyze the notion and purpose of an administrative contract as a part of new Law on General Administrative Procedures. Simultaneously developed with the Public Administration Reform as its corner stone, several aspects of the law have been analyzed, just for the purpose of comparing novelties. Having in mind that such a contract represents a novelty here, but not in the European administrative space, it is our goal to determine and conclude whether this agreement provides an essence of citizens' social and economic demands. The concept of establishing this kind of a 'symbiotic' contract finds its purpose in being *differentia specifica* from any other contracts, thus having government on one side. It still stands as an open issue how such a kind of an agreement will be fully executed, monitored and regulated.

Keywords: *public administration, administrative contract, the Law on General Administrative Procedures, public service, public administration reform.*

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1. Preliminary explanations

The wholesome concept of public administration, including public services as well as administrative procedures, should be realized as an overwhelming project set in motion with the purpose to modernize and develop a certain country. In order to do so, Serbian public administration has undergone profound legal, structural and bureaucratic changes. The symbiosis of variables in public administration reform has provided us with novelties that can go hand in hand with some of the most prosperous countries of the world. The concept of reformation can be viewed as a living organism, not quite depending only on changing the legal procedures (directly administrative procedures) but also on proper citizens' response, application and acceptance of these novelties. Having in mind that the Republic of Serbia has shown "severe" determination to alter, adapt and apply new procedures within the legal core of each institution, it is advisable to calibrate the new Law on General Administrative Procedures with the aftermath it has provided.

It should be said that the changes prior Law has "endured" were the initial pace to put public administration on modernized, legally stable and sustainable grounds; needless to say that it was way past time to reform the structure that has been the matching point, the liaison between government and people. Nevertheless, it must not be disregarded that in orderfor us to analyze the novelties that this Law has carried upon us, it should be mentioned that this very performance of public administration has always been somewhere in between of being a public service and a tool of government officials.

The essence of providing public services on a regular basis presents the welfare of an entire community, thus satisfying a giant specter of social, health or economic demands. Therefore, all administrative activities serve as an organizational and functional system of public services (Tomić, 2021, p. 45). As Tomić points out, "in developed countries– administrative means of providing public services are at all times legally based, regardless of them being strictly legal acts, regulatory implemented or being unilateral or bilateral (administrative contract)".

2. Novelties in the Law on General Administrative Procedure as specific regulators of citizens' demands

In order to properly understand the context of administrative contracts, we have to bear in mind that from the moment the entire process of reforming public sector was set in motion, each effort was made with the intention to

conceptualize and make public administration accessible to each individual; that is to say – position of an individual is now enhanced by proper legal elements, which stand for security and legal protection (Tomić, 2021, p. 80). As Krbek (1937) so virtuously wrote "in a legally determined procedure, held by an appropriate authority, a citizen is considered to be a party, a client with his own rights" (p. 286). Since the first Strategy (back in 2004) it should be stated that Serbia has evolved gradually in identifying the key problems and both legal and structural procedures that must be implemented in order to create good governance, quality public services, professional officials and satisfied citizens and legal entities. Subsequently, we must understand and appreciate the novelties that legal frame, specifically the aforementioned Law brought, and as criticized as it might be, it included provisions that have never been included in a legal framework before, and it was created as a result of prior Strategic reforms (2014-2018). As stated in Public Administration Reform Strategy for 2021-2030 and the Action plan for the period from 2021 to 2025 (2021) - aims, measures and activities in each of the fields are settled to enhance legal and organizational frame, institutional and human resources capacities, as well as creating citizen – related organizational structure[1].

New Law on General Administrative Procedures (2016) was one of the many changes that have been encompassed by the grandiose undertaking of the reformation. Being so, its adoption came simultaneously with the reformation process and has become an inevitable and crucial part of it, not only as to provide drastically increased legal security to citizens, but also to differentiate administrative activities in terms of explicating novelties in a useful and efficient manner.

In order to enable the performance of public administration concerning the public welfare, to be precise, we should firstly (before discussing further changes in the Law) focus on digitalization and the Law on General Administrative Procedure e-platform. The modernization of public administration was one of

[1] In the European Commission Annual Report on Serbia 2020, it was clearly stated that in the field of public administration reform Serbia had been moderately prepared. In general, no progress has been made in this area due to the excessive number of senior public officials, including the lack of transparency.
European Parliament resolution of 25 March 2021 on the 2019-2020 Commission reports on Serbia (2019/2175 INI).
Furthermore, a new platform has been established, named Monitoring the Progress of Public Administration Reform Online, where non-governmental sector, the academic community, international organizations, the press, civil servants, and other interested parties have been advised to access a brand new platform that offers all information about the progress in the area of public administration reform in one place.

the specific and targeted key points that were included in the prior strategies. Nevertheless, it is not sufficient enough to declare the importance of e-Government expansion in order to transform government operations into digitally capable information technologies to promote democracy, improve effectiveness, efficiency, service delivery. Its reach is by far on of the most "tangible" ones when it comes to perfecting public service performance, and thus needs further investments in tools, means and processes, in order to connect citizens with government agencies. "Serbian Electronic Government Development Strategy 2015 – 2018" and E-Government Development Programme of the Republic of Serbia 2020−2022 have proven to provide digitalized administration, in all three areas: government to citizens, government to business and government to government (National Alliance for Economic Development, 2016).

Regarding the definition and innovation of the administrative procedure context, new Law defines the administrative procedure in a broader sense, that of administrative management, subsequently expanding the concept of an administrative matter (Law on General Administrative procedure, 2016). The former definition was solely related upon deciding on the recognition of one's rights or determining the legal obligation of a party, whereas new context of administrative matter refers to different forms of administrative performance (adoption of guarantee acts, closure of administrative contracts and provision of public services) (Lilić, Manojlović Andrić, & Golubović, 2018, p. 35). The regulation of administrative procedure according to the previous Law was strictly conducted on situations of resolving legal issues, subsequently followed by a proper administrative act(decision, permission). Apparently, some administrative situations that were'out of reach', not being directly applied by the law, hadn't been included, such as concluding public/administrative contracts.[2] Subsequently, the definition of an administrative matter, is now thorough and not only intertwining legal actions, but also providing legal protection when it comes to public services provision. Be as it may, it is inevitable to rely on the Strategy of Public Administration reform which has only 'intended' to provide functional and quality performance of state administration and public servants, properly training them to carry to burden of being informationally and communicationally (digitally) literate. New Law on General Administrative procedure has therefore been equipped with

[2] Lilic skillfully criticizes the definition of an administrative procedure. Although it can be seen as a progress there being a definition at all, he stresses out that is quite a theoretical one, inevitably failing to sustain the material definition with clear procedural instructions (Lilić, 2018, p. 37).

specific provisions and alterations (Public Administration Reform, 2021). We have to stress out that crucial advances in public service delivery, protection of fundamental rights and facilitating both a natural person and a legal entity to perform their businesses straightforwardly have augmented gradually ever since the adoption and implementation of this new Law in 2016.[3]

Proper empowerment of the new Law and its provisions has its practical and factual application seen at best with the usage of a warranty act as well as administrative contracts as new institutes stipulated by this Law. Explained strictly theoretically, this act serves as an obligatory duty of the authority to pass a certain administrative act (on party's request) when stipulated by special law. Consequently, pursuant to a guarantee act, government authority is obliged to pass a proper administrative act when a party makes a request that is not in confrontation with the public interest or legal interest of third parties (Law on General Administrative Procedure, 2016). We have to take into consideration that although the notion of a guarantee act is new in this Law, Serbian legal system recognizes it in several laws (Law on Citizenship of the Republic of Serbia, Law on Inspection Supervision etc.) When discussing the purpose of including such legal institute into the core of governmental practice, the basic starting point of the legislature has been to include a guarantee act into much wider implementation, thus creating safe business and legal environment (Lilic et al., 2018, p. 94).

3. The concept of an administrative contract. Understanding the innovation

With regards to European standards of conducting public administration, it is inevitable to notice that this legal innovation was created as a direct result or influence of Serbian integration processes and negotiation within the European Union and a corner stone of strategic reforms.

Be as it may, theoretically its 'intention' was to provoke more active participation of citizens in cooperation with public administration (stressing here both state administration and public services). How "active" this relation really is,

[3] "The legal framework for simplification of administrative procedures has been in place since the 2016 Law on General Administrative Procedures. However, there continues to be regulatory uncertainty for citizens and businesses due to considerable delays with aligning sector legislation with this law. Citizens are often not aware of their improved rights, allowing the administration to apply old cumbersome procedures. The capacities of the Ministry of Public Administration and Local Self-Government to exercise an efficient oversight of the implementation of this law are limited, and there are overlaps in coordination with the Public Policy Secretariat." Source: European Commission, Commission Staff Working Document, Serbia 2019 Report, Brussels, 29.5.2019 SWD(2019) 219 final.

still stays to be revealed, since many of the parties (both normal persons and legal entities) are not quite accustomed to what this contract really provides. The trend towards flexibility in public administration is actually quite characteristic: the basic administrative concern for the public welfare universally requires recourse to new forms, more flexible, better adapted to concrete needs and more efficient, thus creating an analogy between the two types of activity traditionally distinguished as public and private (Langrod, 1955, p. 325). On a material level, the interpretation of any administrative contract requires a proper analysis of the exact terms in the aforementioned act. Let's not get misguided by the grandiosity of the power embedded in the government to act as co-contractor, because as tempting as it may sound, it has its limitations and specific terms. In order to fully grasp the notion of an administrative contract as a "liaison" between public and private law, we have to make a comparative study within French and German definitions of these contracts, but also to conceptualize the very notion of the core of administrative contracts.

Whereas French legal system recognizes administrative contracts (etymology of the word is French *contrat administratif*)[4] subjected to special legal regime separated from the contracts the state concludes by the rules of the Civil law, German system perceives and interprets these contracts as any other contract regarding the legal equality of the parties included (counting the fulfillment of contractual obligations). French administrative contract is also based on consensual will, but the legal ground is quite unequal (Tomić, 2021, p. 234). The determination of the elements of an administrative contract is based on the qualifications of one contracting party as a public entity. However, as Davitkovski points out, the contract must have the characteristics of public administration performance expressed either through the subject of the contract - performing public service, or through the regime by which the contracting parties concede that they will be subjected to clauses derogating from general law. In French law, where administrative contracts come from, these clauses are known as clauses *exorbitantes du droit commun* (Davitkoviski, 2011, p. 3).[5] Tomić and Blažić further point out that in addition to the existence of a

[4] With administrative contracts, we have willing adhesion to create an administrative-legal relations.(Richer, 2002, p. 88–90).

[5] One of the decisions of the Council of State (Conseil d'Etat) contains a definition of the term clause *exorbitante du droit commun*: "a clause which aims to give the contracting parties rights, or, by their nature, obligations, different in nature from those which are subject to free approval under civil and commercial law".
Clauses exorbitantes represent a subjective element of the contract. It usually depends on the will of the contractor (p. 4).

public entity, an administrative contract may directly include the performance of public services or contain administrative regulations, in accordance with the above-mentioned clauses by which specific parties decide to apply administrative regulations of public law. This also implies the adjudication of a possible dispute by special administrative courts (and not general, "civil" judiciary ones)[6] (Tomić & Blažić, 2017, p. 202). The French theorist Gaston Jéze developed the most detailed theory of administrative contracts according to which he classified them as contracts for the supply of movables (*marche de fourniture*) and contracts for investments in public buildings (*marche de travaux public*) (Vukićević Petković, 2015, p. 88). On the other hand, León Deguit argued that there was no fundamental difference between civil law contracts and administrative contracts. According to him, a contract is a legal category and if the elements that constitute it exist, it always exists with the same character (Milovanovic, 2011, p. 117). Tomić and Blažić also state the fact that at the beginning of the 19th century, administrative agreements were considered being a private legal matter, which were placed under administrative jurisdiction. Continuous performance and functioning of public services as the effect of the existence of administrative contracts became a prerogative in French law, when the contradiction of concluding public procurement contracts with the municipality started having private law features (Tomić, Blažić, 2017, p. 205). A critical understanding of the very essence of an administrative contract can perhaps best be understood by comparing it with the German comprehension of an administrative contract that has a public law character. Filipović points out that it is completely legitimate that a public law contract can replace the approval of an administrative act, without any special legal authorization, as long as the contract is drafted in an appropriate form. He adds that the administrative contract and the administrative act can be profiled as two completely different and separate legal institutes, or that the administrative contract can be understood as a special type of administrative act - an administrative act that is not the result of a unilateral declaration of public authority, but the consent of the addressee (Filipović, 2017, p. 91).[7] Milovanovic, referring to the authentic interpretation of Professor Slavoljub

[6] Authors state that within the French system of administrative contracts "the notion of inviolability of contractual content ceased to exist due to the invigorating essence of public interest which carried the entire contract. According to them, the principle*pacta sunt servanda* failed to fulfil its purpose.

[7] The author specifically distinguishes that the Administrative act is passed on the basis of the unilateral will of the public authority, while the necessary consent of the public authorities and the citizens is crucial in order to conclude an administrative contract.

Popovic, emphasizes the position of Otto Maier, who said that legal acts of administration were normally unilateral acts, since they imposed the will of the administration unilaterally, and therefore these acts represented acts of authority and command. In addition to the administrative acts of the "purely unilateral" nature, he also distinguishes acts adopted with consent, such as: concession, appointment of officials, etc., since these acts do not have the character of a contract, where the consent of interested parties is a necessary condition for their legality (Milovanović, 2011, p. 121). Vukićević Petković (2015) sees their sources as a parallel between the French and German administrative agreements and notes that the first ones arose from court practice, while in Germany the administrative agreements were established by law; the similarity is reflected in the fact that in both legal systems, disputes arising from administrative contracts have jurisdiction over administrative courts (p. 92). The essence of the difference according to Tomić and Blažić (2017) lies in the fact that the French administrative contract is in accordance with the will on an unequal legal basis, which emphasizes the importance of public interest, but also the supremacy of public law, while German legal doctrine insists on legal equality both during and after the conclusion of the contract (pp. 203–204).

Milenković (2017) initially states that social and technological concepts, transferred to public administration from the private sector, have contributed to phenomena such as privatization in the public sector, competition, outsourcing and transfer of certain public services from the public to the private sector in the areas of health, education, and social welfare, which in the concept of the welfare state, especially on the European continent, was performed by the state or its public services (p. 68).

Our legal system defines an administrative contract as a written, bilaterally binding act concludedbetweenthe public authority and a party with the purpose to create, modify or terminate a legal relation in that administrative matter(Law on General Administrative Procedure, Article 22.) It is absolutely understood that a contract cannot be contrary to the public interest or legal interest of the third parties, but it should be also stressed out that this public interest IS the main purpose of complying. The very essence of satisfying the public interest is the scene on which an entire legal performance is played (Tomić, 2021, p. 230).[8] Tomić and Blažić dwell on the

[8] Tomić accentuates further that whereas with civil contracts public interest was only the boundary, here we have an aim that needs to be achieved. This public interest is the cause, thus not being strictly interested and functionally oriented towards the relation between contractors.

above-mentioned mentioned classification, emphasizing that the notion of public service is crucial for defining administrative contracts, but that not all contracts concluded by the state with other entities should be characterized as administrative ones (lease or sale agreement). The attention must be paid to the following components: the purpose of conclusion is always the continuous functioning of public services, but also the manner of their execution, given that the state is obliged to protect the public interest and to control and unilaterally change the terms of the contract (Tomić & Blažić, 2017, p. 208)[9] Milenković synthesizes the way in which administrative contracts are identified according to three basic criteria for determining and recognizing an administrative contract when it is not explicitly regulated by law: criterion of the party; goal criterion, and special authority criterion (Milenković, 2017, p. 71). The procedure for concluding administrative contracts is specific and it separates it from civil contracts. Namely, in order to conclude a certain contract, it is necessary to conduct a public announcement, select a candidate who accepts to perform contractual obligations (Vukićević Petković, 2015, p. 67). Filipović emphasizes the fact that the state can apply sanctions in case there are shortcomings in the performance of obligations of the co-contractor (money, means of coercion to terminate the contract), but also the right to unilaterally change the scope of obligation the contractor formerly agreed upon. However, in connection with this authority of the state, the co-contractoris entitled to compensation for obligations imposed on him and which would disturb the financial balance of the contract and finally the right to terminate the contract at any time (Filipović, 2017, p. 72).When confronted and compared, the characteristics of both public and private law are quite explainable, which cannot be the case with an administrative contract, since it tends to comprise both elements. Although the main clause can be shared, that of willingness of both parties (consensual) it is without any doubt an institute of public law, for its main purpose of conclusion is to satisfy vital social needs and not private interests of natural persons and legal entities (Miljic, 2016, p. 13). It is therefore impossible to observe this phenomenon as acting *inter partes*, instead, due to its wide specter of influencing and facilitating public services and social and economic climate it most certainly can be seen as acting *erga omnes.* Therefore, the determinationof bringing this administrative tool onto the legal playground was quite justifiable, since

[9] In his dissertation, Filipović explains in detail two theories here, starting from the standpoint of French legal theory, of which the first is the theory of arbitrariness (*fait du Prince*), and the second is the theory of unpredictability (i*mpervision*).

(as shown and witnessed in the EC reports) our public administration sector needed strategical and legislative aid due to having issues with accountability of the public sector and ineffective and inefficient progress. For quite a while public administration had failed to provide incentive to legal entities, failing to meet citizens' demands and instead of creating a modernized version of its own, it had actually managed to do quite the opposite. This synallgamatic (*Greek org*.) agreement can be explained as having several crucial elements – 1. Having effect on everyone, it does serve as a way of obtaining public interest with benefits to legal entities and other clients (read: citizens); 2. Having authority, that is to say, one of the basic elements of the state, that of power, enables one side to inevitably hold its supreme position. Administrative contracts are recognized by the fact that they are contracts of public bodies, where management functions of these bodies are also their responsibility for the general welfare. According to this, the public regime has a need for flexibility in contractual performance, which allows variability of public interest needs. "At the same time, co-contractors must be protected from the consequences of such contract changes, in order to ensure the continuity of contract performance, as well as the capacity and will of the contractors to perform public affairs in the future" (Davitkovski, 2011, p. 3). Tomić and Blažić critically claim that the state concludes an administrative contract with private legal entities for the sole purpose - ensuring the functioning of the public service, i.e., the realization of some common good, public interest, or achieving socially significant results. The authors thus emphasize that administrative contracts differ from private law contracts in defining the private purpose of the latter ones. There are other differences, in terms of ways of drafting contracts, their form, "asymmetric legal position of the parties", but also in terms of jurisdiction (Tomić, Blažić, 2017. p. 206).If due to unforeseeable circumstances following the conclusion of a contract, the fulfillment of the obligation for one' s party becomes more difficult, the party can make a request from another contracting party for the contract to be changed or modified (Article 23.). This request for modification comes into consideration if the changes of the contract do not cause damage to the public interest; otherwise, the authority will reject the request by bringing a decisionif the contract changes tend to provoke greater damage to the public interest than the damage that may be caused to the otherco-contractor. It is absolutely clear that the administration here has coercive powers which are not available to the ordinary private contractor, and becomes what is called the *mise en regie*. Furthermore, the *resiliation* of the contract is a unilateral act on the part of the administration which puts another party in a legal

cul-de-sac, where a contract can be modified or terminated (Mewett, 1959, p. 222).

Following the aforementioned observations, noteworthy enough is to make a clear distinction between administrative contracts and administrative acts, and likewise comparing public to private law and its provisions and regulations, these apparently similar legal formulations differ in a few variations: namely, an administrative act stands for a supreme will of the public subject, which in that very authoritative manner defines this legal relations.[10] Furthermore, it is not the legal situation of the public authority that is being decided upon, but an administrative matter of a party, whereas with administrative contracts we have bilateral legal transactions which are concluded upon a certain administrative matter (Tomić, 2021, p. 234).[11] Perhaps the most discussed discrepancy is that of a legal inequality of the parties in the contract. Tomić further points out that the contractual balance is simply inevitable and logical, since the public interest stays the dominant orientation; althoughthe contractual parties conclude it willingly, consensually and in written form, it is nevertheless the contractual technique of an entirely administrative matter (Tomić, 2021, p. 236).[12] Legal and lawful synergy resulting from the merging of a public body with an individual or a private entity for the benefit of public administration certainly requires a more detailed analysis of the administrative contract and concessions. Tomić and Blažić, further analyzing the very

[10] This is visible and evident even when it comes to granting some rights to an opposite party (or even issuing an order, prohibiting certain rights).

[11] The administrative contract is firmly linked to unilateral acts of the administration, and especially with the administrative act. Usually an administrative contract is concluded after adoption of an administrative act (selecting the contracting party that will enter into a contractual relationship with public administration) (Miljić, 2016, p. 33).

[12] For the purpose of explaining the notion of administrative contracts we can briefly analyze the Law on public-private partnership and concessions, where it is clearly stated that the provisions of this Law and the relevant provisions of the law and other regulations that govern public property and budgetary system apply to all the investments of publicly owned assets into a joint company with a private partner exclusively for the purpose of realization of public-private partnership projects. Regulating of conditions, manners and procedures for conclusion of public contracts is based on the following principles: protection of public interest, efficiency, transparency, equal and fair treatment, free market competition, proportionality, environmental protection, autonomy of will and equality of contracting parties. The private partner selection procedure is either a public procurement procedure laid down in the law regulating public procurements, or the concession award procedure laid down by this Law. (Zakon o javno-privatnom partnerstvu i koncesijama [Law on Public-Private Partnership and Concessions]. *Službeni glasnik RS*, br. 88/2011, 15/2016 i104/2016).

notion of concession[13], additionally indicate that the concession is a contract of a special type, which by its function is a public law instrument (Tomić, Blažić, 2017, p. 210).[14] It is important to mention that the administrative contract terminates upon the expiration of the term for which it was concluded, and as concessions are granted for a certain period of time, the concession contract ceases to be valid upon the expiration of that period. Hence, to summarize, contracts are bilateral legal agreements inthe domain of public law, which are however subjected to strict legal terms and conditions, since when it comes to the control over the conclusion of administrative contracts, understanding the importance and the legal matter of these contracts can be overviewed form the perspective that actually clarifies out legal perception. As Stanicic states "firstly, public legal bodies which form them do so by exercising their own public powers which are without doubt subjected to legality control; secondly, in forming administrative contracts, public funds are used, which again require strict control; thirdly, forming administrative contracts often imply using public goods" (Staničić, 2016, p. 233). In the end, Filipović points out that the administrative contract ceases to be valid by fulfilling the obligation that was agreed; upon expiration of the term, termination of the subject of the contract, termination of the existence of the contracting party, termination by agreement, unilateral termination or by the decision of the Administrative Court (Filipović, 2017, p. 81).

[13] The concession act implements the substitution of the subject in the exercise of rights or functions intended exclusively for the state, so that this position is occupied by a private entity (Tomić, Blažić, 2017, p. 210).

[14] Analyzing the judgments and concessions, the publication entitled "Selected Judgments of The Court of Justice of The European Union on Public Procurement" announces: In the case of a public procurement contract, the contracting authority itself is responsible for that compensation. In the case of concessions, the fee consists of the right to exploit the works or services. The Contractor may charge for the use of these works or services. Therefore, all or part of the compensation comes from a source other than the client. The CJ considers that there is a service concession when the agreed method of compensation consists of the right of the service provider to use its own services for a fee (C-382/05 Commission v Italy). The CJ has introduced another key element in deciding whether a particular contract constitutes a concession contract. The main feature of the concession is that the concessionaire assumes the main or at least a significant part of the operational risk (C-274/09 Privater Rettungsdienst and Krankentransport Stadler, C-348/10 Norma-A on Dekom, and C-206/08 Eurawasser). Risk must be interpreted as the risk of exposure to unpredictable market changes, which may include the following: • competition from other entities; • insufficient provision of services to meet demand; • inability of those responsible to pay for the services provided; • insufficient revenue to cover the costs of these services; • liability for damage caused by inadequate services. Selected Judgments of The Court of Justice of The European Union on Public Procurement Public Procurement Directorate., SIGMA, p. 378.

4. Final considerations

Applying and maintaining proper legal order, ensuring that every principle of legality and constitutionality is respected have never been an easy task. Quite the contrary, its normative side has always been strict and organized, whereas its factual nature has somehow always depended on quite a number of factors. When implementing new Law, especially the one that is to affect the entire specter of subjects and entities, issues concerning the practical application, proper response from the citizens, adequate training and knowledge of the officials of state administration (public authorities) inevitably, the light is thrown on many collaborating institutions and public welfare as well. Theoretically, we have advanced greatly in defining new law provisions and making an effort to implement them. Strategically, we have augmented the work of legislature and Councils up to a level worth praising, bringing documents into actions, ensuring that numerous aspects of the Strategy are well conducted and controlled. On a more mundane, citizen-level of apprehension, many of the novelties stay unclear to a regular individual who comes seeking for its rights. It happens on numerous occasions that a citizen fails to be granted with a certain right of his own, due to the fact that he didn't even know it was his right. Although many of the novelties do serve as a facilitator of public service performance, including the one of electronic notifications, it is up to different institutions to make the public digitally literate. Or is it? Is the social, economic and even legal climate just unprepared for so many modern-world legal innovations? As Vasiljevic (2019) skillfully points out, the adoption and introduction of special laws in respective administrative areas and their compliance with the relevant provisions of the Law should be ensured (p. 172).

Even though public contracts (EU term for administrative contracts) aroused onto the scene in XX century, the question was whether they were introduced as means to help individuals and legal entities to perform their activities and businesses more effectively, without red type and delays, or just as a way of facilitating their own overburdened service, servants and cut costs on the way? On the other hand, having a collaboration and legal connection between public and private sector is perhaps what was needed for both sides, enabling one to become more 'elasticized' and open to private sector offers instead of being rigid and strict (public authorities are now obliged to respect the deadlines, basic principles of efficiency, transparency and utmost legitimate usage of public means and goods). On the other hand, regarding the other side, there is finally a chance to create a more developed and modernized socio-economic

climate by gaining certain profit for its own, but by being constantly supervised by public authorities. Grasping the dynamic nature of public sector, an entire phenomenon of providing public service to an extent that would always guarantee satisfied 'clients', most automatically calls for a shift in orientation towards work, provision of services and continuousness in making progress. Because of them, making constant changes in the provisions of laws, moving them towards citizens and cutting costs in the process is a never-ending cycle, and an incentive and aim each public administration strives to achieve. How successful, lucrative and beneficial that would be, is yet to be revealed and explained, for our legal system along with administrative procedures should not only strive for legal equality, but equity as well. Considering that the most important element in administrative contracts is the public interest, this indicates that they do not hinder the efficiency of the administration, moreover, the existence of administrative contracts enriches its activity (Vukićević Petković, 2015, p. 68).

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KONTEKSTUALIZACIJA ODREDBI ZAKONA O OPŠTEM UPRAVNOM POSTUPKU SA POSEBNIM OSVRTOM NA KONCEPT UPRAVNOG UGOVORA

REZIME: Rad se bavi determinisanjem javne administracije kao efikasne, digitalno razvijene i transparentne javne službe. Cilj rada je analiziranje odredbi Zakona o opštem upravnom postupku, sa posebnim osvrtom na pojam i svrhu upravnog ugovora kao dela novog ZUP-a. Simultano razvijanje reforme javne administracije, napredne Strategije i konstituisanje raznovrsih tela angažovanih na razvijanju i napretku javnog sektora, uslovilo je i mnogobrojne promene u Zakonu o opštem upravnom postupku, od kojih su neke pomenute u radu. Imajući u vidu da upravni ugovor ovde predstavlja novinu u našoj zemlji, ali ne i u Evropskom administrativnom prostoru, cilj nam je da utvrdimo i zaključimo da li ovaj sporazum pruža suštinu socijalnih i ekonomskih zahteva građana. Koncept uspostavljanja ove vrste 'simbiotičkog'

ugovora pronalazi svoju svrhu u tome da se razlikuje od bilo kojih drugih ugovora, imajući vladu kao ugovarača. Još uvek ostaje debata kako će se ovakva vrsta sporazuma u potpunosti izvršiti, nadgledati i regulisati.

Ključne reči: *javna administracija, interes građana, upravni ugovor, Zakon o opštem upravnom postupku, reforma javne administracije.*

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CRIMINAL OFFENSES AGAINST PROPERTY SEEN FROM AN ANGLE OF BASIC INSTITUTES OF LAW - THINGS AND REAL RIGHTS

ABSTRACT: Based on the data from official documents of the Republic Statistical Office and judicial institutions of the Republic of Serbia, the paper analyzes and presents the results of research related to the threat to property and real rights in the Republic of Serbia in the period from 2009 to 2019. We performed the analysis of available data in order to detect the "loss of crime" in a group of crimes aimed at protecting property. The purpose of this paper is a causal analysis of crimes against property in the entire territory of the Republic of Serbia with the aim of revealing causal relations and links between the number of reported, accused and convicted persons for these crimes, to determine the degree of loss of crime and take systemic measures to reduce that loss measure, in accordance with the standards of developed countries.

Keywords: *Crimes against property, Property, Things and real rights.*

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1. Introduction

The Roman law did not determine the notion of property as Romans considered things as "notions clear to all". Hence, any definition of the notion of property was considered as tautology. One of, so to say, the most quoted definitions of the term is that "the things are material segments of the nature apprehended by people and that serve to satisfy certain human needs". Bonfante says that Roman jurists regarded property as *una entita esteriore che, nella coscienza economico-sociale, e isolata e concepita come oggetto a se stante* (outer entity, which is in social and economic view deemed as separate and regarded as an independent object) (Milošević, 2012, p. 223).

In terms of civil law, a thing is a part of material or tangible nature in people's possession with a certain ownership or any other property right. As a result, under civil law, things are deemed as only those objects that cumulatively have two features. The first one is that they are *de facto* and virtually in human possession, but their existence does not require a certain form or a verification by touching as it had been previously required by Roman law *(res corporales eae sunt, quae sua natura tanga possunt)*. In line with the abovementioned, all things serving man and submitted to human will represent *res* in legal sense. The second condition is that there is ownership right or any other property right pertaining to this this thing (Stanković & Orlić, 1996, p. 6).

No matter the challenges in defining a notion of things (either to include all things, or exclude those not regarded as things), there is a consensus in law on the division of property. The property can be divided into *corporalia* (corporal) and *incorporalia* (incorporal), *res in commercio* (things in trade) and *res extra commercium* (things outside trade), *res mancipi* (things in mancipation)[1] and *res nec mancipi* (things not in mancipation), *genera* (replaceable) and *species* (irreplaceable), *quae primo usu consumuntur* (consumable) and *quae usu minuutur* (non-consumable), *mobilia* (movable) and *immobilia* (immovable), *universitates* (plain and complex), divisible and non-divisible, principal things and *accessorium* (accessories) (Stanojević, 1999, p. 183).

Property rights are defined as *iura in re* and as such represent the rights with a property nature. Property rights have several characteristics such as:

[1] Conteporary law did not keep this division, as it had been considered outdated even in the ancient times, and completely forgotten in the post-classical times. The criterium of such division was exclusively economic. Such division of things was accepted and used only in the Roman law.

their object (which is always a thing and solely a thing since the property claims either lay claim to a certain thing, or a recognition of a right to this thing); incorporation into an object (ever since the Roman law, property rights have been considered as contained in things, or as their integral part); that they have effect *erga omnes* (towards everybody); and that they are considered as permanent (such rights do not cease to exist with the destruction of property, or, if not permanent, than fairly longer than any other rights). The classical law recognizes some types of property rights such as ownership, formality, mortgage and land lease with property effect. However, according to the modern law, there are two groups of such rights, that is, the ownership in the widest sense, and *iura in re aliena* (property rights over other people's possessions) that encompass formality, mortgage rights and long-term lease of land with property effect (Malenica, 1999, p. 183).

2. Methodology

The subject of the paper are things and real rights as protective subjects of illegal attacks on them. The basic research question in the paper is: is the protection of a person's belongings and real rights important for a person's sense of legal security?

The scientific goal of this paper is the epistemological analysis of criminal acts against property on the entire territory of the Republic of Serbia in the period 2009-2019 year, with a focus on considering the causal links and relations between the number of reported, accused and convicted persons in order to determine the degree of loss of crime and take systemic measures to reduce that loss to a reasonable extent in accordance with the standards of developed countries.

The general hypothesis from which the paper based was that for the feeling of legal security of citizens in the Republic of Serbia, it is important to protect their belongings and real rights, which are provided by preventing crimes against personal, social and state property.

Almost all basic methods of cognition and research were used in the preparation of the paper, with a focus on the methods of analysis, synthesis, classification, generalization and inductive-deductive method. Of the general scientific methods, the statistical method was applied, and of the data collection methods, the operational method of document content analysis with both its techniques, qualitative and quantitative content analysis, was primarily used. For the needs of quantitative analysis of documents, a specially constructed instrument was used - the Code of Terms and Codes.

The main sources of literature from which information was extracted are data in official documents of the Republic Statistical Office and judicial institutions of the Republic of Serbia on attacks on property on the territory of the Republic of Serbia in the period from 2009 to 2019.

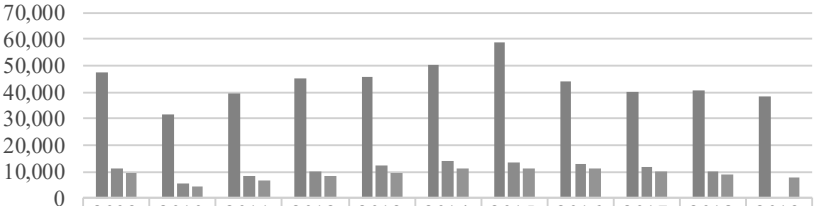
The unit of analysis was data on the number of reported, accused and convicted persons for criminal offenses who have things and real rights as a subject of protection (Blagojević Danilović & Tančić, 2018).

3. Research

According to the data in Graph 1, in the territory of the Republic of Serbia, in the period from 2009 to 2019, on an annual level, on average, about 43,881 adults were reported for a crime against property. Out of the total number of reported persons, an average of 10,011 indictments were filed annually, of which an average of 9,097 convictions were handed down annually, which is 20.73% of the total number of reported persons for this group of criminal offenses.

The most general analysis of this group of criminal offenses indicates a large discrepancy between the number of filed criminal charges, accused and convicted adults for criminal offenses against property. The total percentage of loss of crimes in this group of crimes is high and amounts to 79.27%.

Chart 1: Number of reported, accused and convicted adults in the territory of the Republic of Serbia for criminal offenses against property in the period from 2009 to 2019

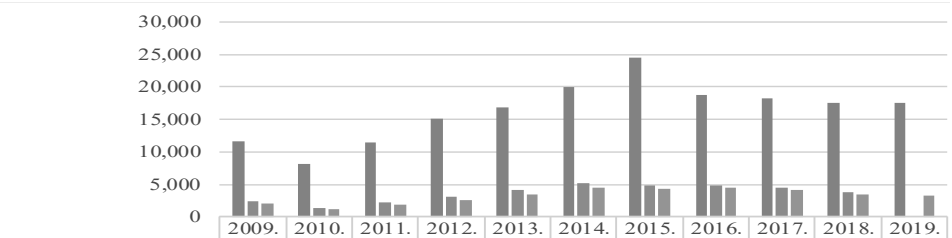


	2009.	2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.
No. of the reported	47,343	31,618	39,742	45,291	45,899	50,303	58,741	44,000	40,443	40,595	38,713
No. of the arraigned	11,543	5,768	8,395	10,151	12,186	13,868	13,299	13,017	11,846	10,050	0
No. of the convicted	9,608	4,739	6,825	8,338	9,729	11,236	11,301	11,302	10,307	8,807	7,877

Source: Authors reasarch

In the continuation of the research, we observed individual crimes against the same protective facility, trying to find out which are the crimes against property that have the greatest loss of crime in the phase of conducting criminal proceedings.

Chart 2: The number of the reported, arraigned and convicted persons of age in the entire territory of the Republicof Serbia for the criminal offence of thefts in the period between 2009 and 2019

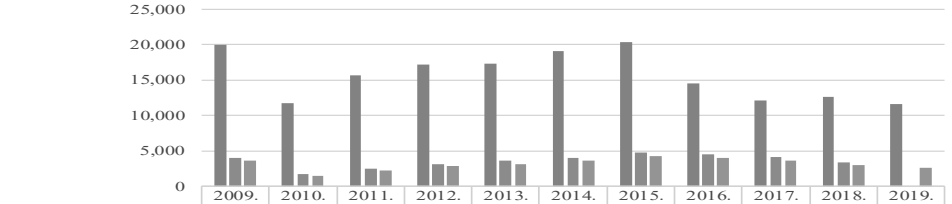


	2009.	2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.
No.of the reported	11,560	8,226	11,463	15,102	16,890	19,962	24,571	18,677	18,180	17,624	17,626
No. of the arraigned	2,499	1,292	2,187	3,059	4,149	5,194	4,795	4,900	4,477	3,861	0
No. of the convicted	2,143	1,129	1,846	2,603	3,495	4,455	4,265	4,468	4,086	3,528	3,221

Source: Authors research

From the data shown in Graph 2, it can be seen that in the past eleven years, an average of 16,353 adults were reported for the crime of theft, of which an average of 3,310 were charged. Out of the total number of accused persons, an average of 3,204 persons were indicted annually by the verdict of the competent courts, which is 20% of the reported persons.

Chart 3: The number of the reported, arraigned and convicted persons of age in the territory of the Republic of Serbia for aggravated theft in the period between 2009 and 2019



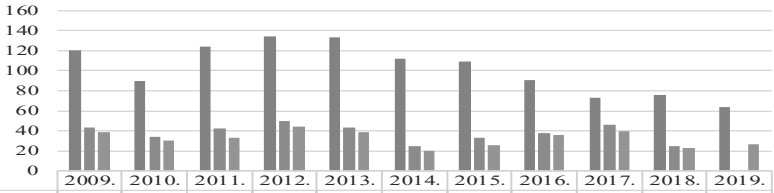
	2009.	2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.
No. of the reported	19,992	11,722	15,712	17,191	17,272	19,119	20,367	14,523	12,132	12,621	11,617
No. of the arraigned	3,996	1,698	2,505	3,137	3,606	4,096	4,784	4,519	4,198	3,435	0
No. of the convicted	3,636	1,507	2,242	2,846	3,145	3,595	4,340	4,076	3,697	3,022	2,665

Source: Authors research

The same legality as in the analysis of the criminal offense of theft can be observed in the case of the criminal offense of aggravated theft (Chart 3), where in the past eleven years, annually, on the territory of the Republic of Serbia, an average of 15,661 adults were reported. Of the reported adults, on average about 3,270 persons were indicted and 3,161 convicted annually, which represents about 20% of the reported persons. As with the crime of

theft, so with the crime of aggravated theft, about 80% of cases represent the loss of a crime.

Chart 4: The number of the reported, arraigned and convicted persons of age in the territory of the Republic of Serbia for robbery in the period between 2009 and 2019

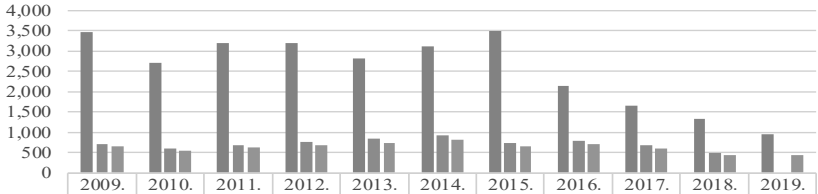


	2009.	2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.
No. of the reported	120	90	124	134	133	112	109	91	73	76	64
No. of the arraigned	43	34	42	50	43	25	33	38	46	25	0
No. of the convicted	39	30	33	44	39	20	26	36	40	23	27

Source: Authors research

In the case of robbery (Graph 4), 102 adults were reported annually, among whom an average of 35 indictments were filed, of which 32 adults were convicted annually, which is 31% of the total number of reported persons.

Chart 5: The number of the reported, arraigned and convicted persons of age in the entire territory of the Republic of Serbia for the criminal offence of larceny in the period between 2009 and 2019

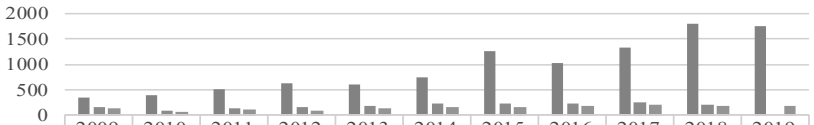


	2009.	2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.
No. of the reported	3,464	2,718	3,190	3,211	2,818	3,110	3,494	2,149	1,655	1,337	961
No. of the arraigned	718	592	691	762	846	919	749	803	685	507	0
No. of the convicted	665	543	626	691	752	826	659	702	615	442	451

Source: Authors research

When it comes to the criminal offense of robbery (Chart 5), in the observed period, an average of 2,555 adults were reported for this criminal offense annually, of which about 661 persons were charged annually, and at the end of the criminal proceedings, convicted by a court verdict. about 634 adults, which is about 25% of the total number of registered persons.

Chart 6: The number of the reported, arraigned and convicted persons of age in the territory of the Republic of Serbia for the criminal offence of embezzlement in the period 2009-2019

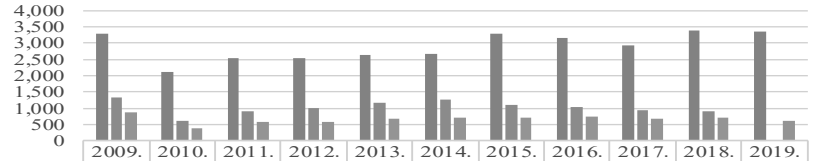


	2009.	2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.
No. of the reported	358	396	502	637	603	744	1,250	1,032	1,340	1,808	1,748
No. of the arraigned	168	88	133	152	188	226	221	228	258	219	0
No. of the convicted	127	63	103	98	129	166	173	184	208	193	188

Source: Authors research

For the criminal offense of evasion (Chart 6), in the observed period, on an annual level, on average, about 947 criminal charges were filed against adults in the entire territory of the Republic of Serbia. Out of the total number of filed criminal charges, on average about 171 indictments were filed annually, on the basis of which about 148 convictions were pronounced annually before the competent courts, which represents only 16% of the adults reported for this crime.

Chart 7: The number of the reported, arraigned and convicted persons of age in the entire territory of the Republic of Serbia for the criminal offence of fraud in the period between 2009 and 2019

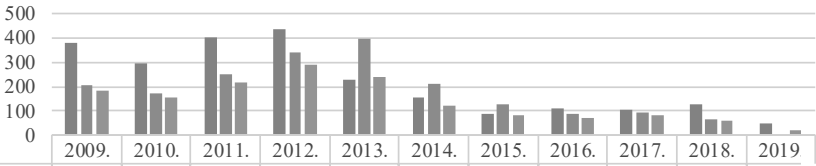


	2009.	2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.
No. of the reported	3,278	2,116	2,536	2,544	2,627	2,687	3,302	3,167	2,939	3,405	3,351
No. of the arraigned	1,344	633	916	997	1,180	1,261	1,105	1,036	942	913	0
No. of the convicted	867	403	570	583	684	722	730	745	685	722	622

Source: Authors research

In the observed period, for the criminal offense of fraud (Graph 7), an average of about 2,666 criminal charges were filed against adults, of which the competent prosecutor's offices filed an average of 938 indictments and an average of 667 convictions per year, which makes up 25% of the total number of registered adults.

Chart 8: The number of the reported, arraigned and convicted persons of age in the entire territory of the Republic of Serbia for the criminal offence of obtaining and using credit and other benefits under false pretences in the period between 2009 and 2019

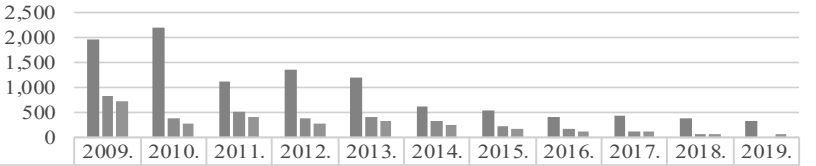


	2009.	2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019
No. of the reported	381	296	401	435	228	156	88	112	107	127	48
No. of the arraigned	206	173	253	338	396	213	130	90	94	69	0
No. of the convicted	182	155	217	291	242	121	82	70	81	59	19

Source: Authors research

From the data presented in Graph 8, it is evident that the criminal offense of unfounded acquisition and use of loans and other benefits is not one of the most frequent criminal offenses against property in the Republic of Serbia. In this period, an average of 216 persons were reported for this crime annually, of which the competent prosecutor's offices filed an average of about 178 indictments, and the competent courts handed down an average of 138 final verdicts per year, which represents 64% of the total number of reported persons.

Chart 9: The number of the reported, arraigned and convicted persons of age in the entire territory of the Republic of Serbia for the criminal offence of petty theft, embezzlement and fraud in the period between 2009 and 2019



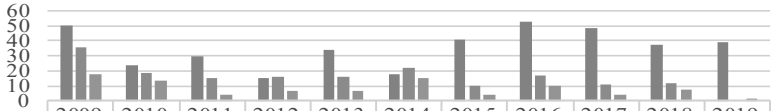
	2009.	2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.
No. of the reported	1,950	2,187	1,114	1,364	1,203	614	545	420	422	382	342
No. of the arraigned	833	384	504	370	415	330	219	165	122	80	0
No. of the convicted	728	276	400	289	327	247	179	130	107	72	54

Source: Authors research

For the criminal offense of petty theft, evasion and fraud (Chart 9), in the first five years of the observed period, significantly more criminal charges were filed against adults than in the next six years. The reason for that is that in that transitional period, the legal regulations changed, according to which

the essence of this criminal act began to include other types of behavior. On average, about 958 adults were reported for this crime annually. The competent prosecutor's offices filed an average of about 311 indictments, and the competent courts handed down an average of about 255 final verdicts per year, which represents 27% of the total number of reported persons.

Chart 10: The number of the reported, arraigned and convicted persons of age in the entire territory of the Republic of Serbia for the criminal offence of appropriation of other people's property in the period between 2009 and 2019

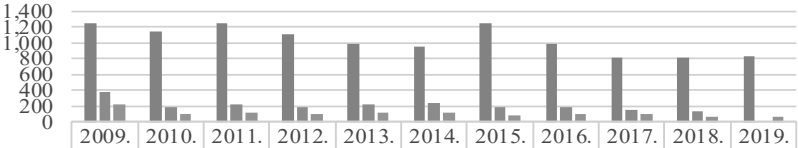


	2009.	2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.
No. of the reported	50	24	30	15	34	18	41	53	48	37	39
No. of the arraigned	36	19	15	16	16	22	10	17	11	12	0
No. of the convicted	18	14	4	7	7	15	4	10	4	8	2

Source: Authors research

Seizure of someone else's property is a criminal offense that does not have a large percentage of participation in property crime in Serbia. An average of 35 criminal charges are filed annually for this crime against adults, of which about 16 people are charged annually. Convictions against adults for this crime averaged 93 per year, representing about 24% of the total number of criminal charges filed (Chart 10).

Chart 11: The number of the reported, arraigned and convicted persons of age in the entire territory of the Republic of Serbia for the criminal offence of destruction and damage of other people's property in the period between 2009 and 2019

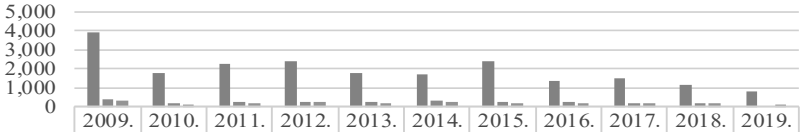


	2009.	2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.
No. of the reported	1,252	1,137	1,249	1,107	981	955	1,243	983	821	809	840
No. of the arraigned	373	187	225	190	228	241	198	181	159	136	0
No. of the convicted	225	103	114	103	116	118	92	102	94	73	74

Source: Authors research

A large loss of crime in the Republic of Serbia, in the period from 2009 to 2019, was also observed in the criminal offense of destruction and damage to another's property (Chart 11), for which about 1,035 adults were reported annually, about 193 were charged and About 110 persons were convicted by final verdicts of the competent criminal courts, which makes about 17% of the total number of persons reported for this criminal offense.

Chart 12: The number of the reported, arraigned and convicted persons of age in the entire territory of the Republic of Serbia for the criminal offence of unauthorized use of another's vehicle in the period between 2009 and 2019

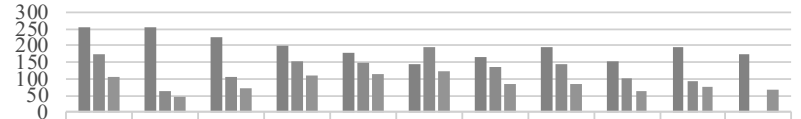


	2009.	2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.
No. of the reported	3,896	1,760	2,256	2,393	1,765	1,743	2,413	1,400	1,481	1,190	826
No. of the arraigned	377	176	263	293	269	324	238	239	215	201	0
No. of the convicted	333	156	226	250	229	269	199	217	201	191	152

Source: Authors research

From the presentation of the number of reported, accused and convicted persons for the criminal offense of unauthorized use of another's vehicle in Graph 12, it is clear that the loss of crime in this criminal offense is enormous. Namely, in the Republic of Serbia, in the observed period (2009-2019), on average about 1,920 criminal charges were filed annually against adults, of which on average about 234 indictments were filed annually, and by the competent courts about 220 were issued to adults. convictions, which accounts for about 11% of the total number of criminal charges filed.

Chart 13: The number of the reported, arraigned and convicted persons of age in the territory of the Republic of Serbia for the criminal offence of extortion in the period between 2009 and 2019

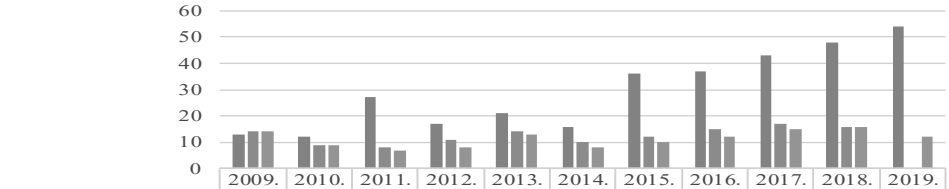


	2009.	2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.
No. of the reported	256	256	226	201	179	143	167	194	154	193	175
No. of the arraigned	173	63	107	151	149	194	136	146	100	93	0
No. of the convicted	107	46	70	108	113	121	83	86	62	76	68

Source: Authors research

The situation is much more favorable with the criminal offense of extortion (Chart 13), where on average criminal charges were filed against 195 adults annually, of which, on average, about 119 indictments were filed annually, and about 85 final verdicts were handed down by the competent courts. adults, which represents 44% of the total number of filed criminal charges for this crime.

Chart 14: The number of the reported, arraigned and convicted persons of age in the territory of the Republic of Serbia for the criminal offence of blackmail in the period between 2009 and 2019

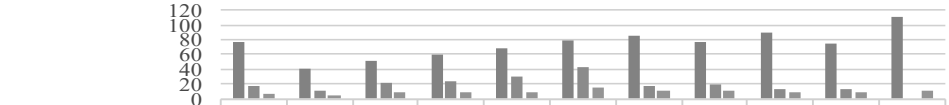


	2009.	2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.
No. of the reported	13	12	27	17	21	16	36	37	43	48	54
No. of the arraigned	14	9	8	11	14	10	12	15	17	16	0
No. of the convicted	14	9	7	8	13	8	10	12	15	16	12

Source: Authors research

The situation is similar with the crime of blackmail (Chart 14), where on average in the entire RS for this crime, annually, about 29 adults were reported to the investigative bodies, of which about 12 people were indicted annually, and At the end of the criminal proceedings, about 11 adults were convicted annually by final judgments of the competent courts, which represents 38% of the total number of reported persons.

Chart 15: The number of the reported, arraigned and convicted persons of age in the territory of the Republic of Serbia for the criminal offence of abuse of trust in the period 2009-2019



	2009.	2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.
No. of the reported	76	40	52	60	68	78	85	76	90	75	111
No. of the arraigned	18	11	21	23	30	43	18	19	14	14	0
No. of the convicted	7	4	8	8	9	16	10	10	9	9	10

Source: Authors research

For the commission of the criminal offense of abuse of trust (Chart 15), in the observed period, on average about 74 adults were reported annually, of which an average of 19 persons were indicted, and the accused were convicted on average about 9 adults per year, which represents about 12% of the total number of registered persons.

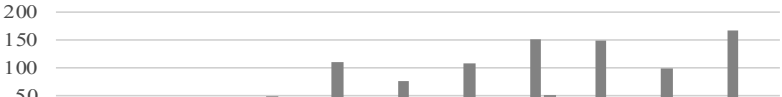
Chart 16: The number of the reported, arraigned and convicted persons of age in the territory of the Republic of Serbia for the criminal offence of greenery in the period between 2009 and 2019

	2009.	2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.
No. of the reported	32	45	52	28	31	43	49	61	37	39	38
No. of the arraigned	15	3	10	18	11	14	11	7	13	11	0
No. of the convicted	5	1	2	1	0	3	2	1	5	3	2

Source: Authors research

The largest loss of crime in the observed period was in the criminal offense of greenery (Chart 16), for the commission of which an average of about 41 adults were reported annually, of which about 10 were indicted and only about 3 were convicted by the competent courts. per year, which is only 7% of the total number of registered persons.

Chart 17: The number of the reported, arraigned and convicted persons of age in the territory of the Republic of Serbia for the criminal offence of unlawful occupation of land (2009-2019)



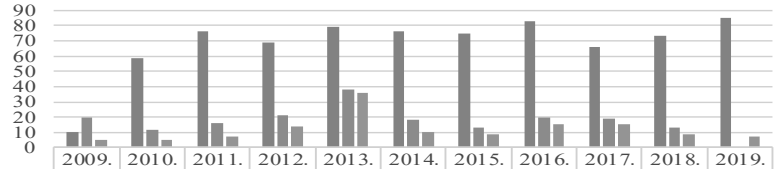
	2009.	2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.
No. of the reported	43	42	46	49	111	77	109	150	149	99	167
No. of the arraigned	41	19	16	10	38	43	20	51	33	24	0
No. of the convicted	26	10	7	7	11	23	13	24	28	13	10

Source: Authors research

For the commission of the criminal offense of illegal occupation of land (Chart 17), in the observed period, on the territory of RS, on average about 95 adults were reported annually, of which about 27 persons were charged per year, and of the persons against whom an indictment was filed, The competent

criminal courts convicted an average of about 15 adults a year, which is 16% of the total number of persons reported for this crime.

Chart 18: The number of the reported, arraigned and convicted persons of age in the territory of the Republic of Serbia for the criminal offence of unlawful occupation of premises (2009-2019)

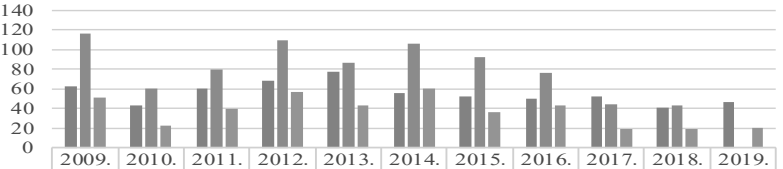


	2009.	2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.
No. of the reported	10	59	76	69	79	76	75	83	66	73	85
No. of the arraigned	20	12	16	21	38	18	13	20	19	13	0
No. of the convicted	5	5	7	14	36	10	9	15	15	9	7

Source: Authors research

The situation with the criminal offense of illegal immigration is almost identical (Chart 18), which, contrary to the practice in developed countries, still exists in the Republic of Serbia. In the entire observed period (2009-2019), an average of about 69 adults were reported for the commission of this criminal offense per year, of which the competent prosecutor's offices filed indictments for about 17 people, and the competent courts issued an average of about 12 adults. final convictions, which represents 17% of the total number of persons reported for this crime.

Chart 19: The number of the reported, arraigned and convicted persons of age in the territory of the Republic of Serbia for the criminal offence of infringement of another's right (2009-2019)



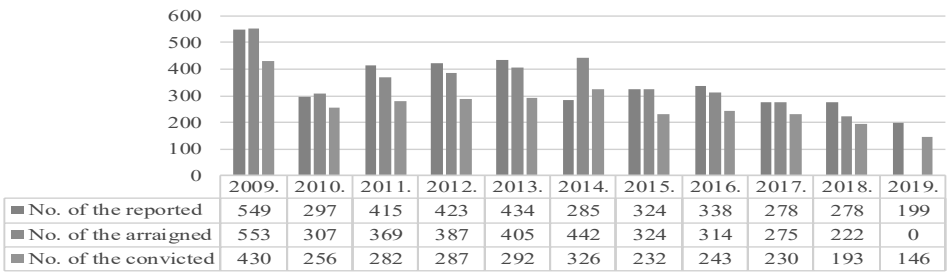
	2009.	2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.
No. of the reported	63	43	60	68	78	56	53	50	52	41	47
No. of the arraigned	116	60	80	110	87	106	92	76	44	43	0
No. of the convicted	51	23	40	57	43	60	37	43	19	19	20

Source: Authors research

For the criminal offense of damage to other people's rights (Chart 19), in the analyzed period, about 56 adults were reported on average per year. The curiosity of this criminal offense is that in the same period, on average, about

74 persons were indicted annually by the competent prosecutor's offices, and about 37 adults were convicted by final criminal courts, which is 66% of the total number of reported persons. The reason for this should be sought exclusively in the delay of court proceedings and their excessive duration, ie duration beyond a reasonable time, so that for some criminal offenses for which criminal charges were filed in an earlier period, indictments were filed and convictions were passed in the analyzed period (2009-2019).

Chart 20: The number of the reported, arraigned and convicted persons of age in the territory of the Republic of Serbia for the criminal offence of concealment in the period 2009-2019



	2009.	2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.
No. of the reported	549	297	415	423	434	285	324	338	278	278	199
No. of the arraigned	553	307	369	387	405	442	324	314	275	222	0
No. of the convicted	430	256	282	287	292	326	232	243	230	193	146

Source: Authors research

In the observed period (2009-2019), the smallest loss of crimes in the group of crimes against property was in the crime of concealment (Chart 20). On average, about 347 adults are reported for committing this crime every year. Of the reported perpetrators of this crime, on average about 327 indictments were filed against adults on an annual level (only twenty less than the average number of reported persons), and of the accused, on average about 265 final convictions were handed down annually, which represents 76% of the total number of registered persons for the entire observed period.

4. Discussion

Generalizing the relationship between the number of reported, accused and convicted persons for crimes against property, it can be concluded that this type of crime has a large loss of crime. Namely, in the entire territory of the Republic of Serbia in the observed period (2009-2019), 482,688 criminal charges were filed against adults for criminal offenses against property. Out of the total number of filed criminal charges, the competent prosecutor's offices filed 110,123 indictments against adults, which is 22.81% of the reported

persons. Out of the total number of accused persons, the competent courts in court proceedings handed down 100,069 final convictions, which makes 90.87% of convicts, in relation to the accused and 20.73% of convicts in relation to the reported persons.

From the analysis of criminal offenses against property in the observed period, it was determined exactly that the loss of crime for the entire group of criminal offenses was 79.27%.

For individual offenses from this group of criminal offenses, the loss of crime was, for criminal offenses: greenery 93%; unauthorized use of someone else's vehicle 89%; trust abuse 88%; evasion 84%; land occupation 84%; destruction and damage to someone else's property 83%; illegal immigration 83%; petty theft 80%; aggravated theft 80%; confiscation of someone else's property 76%; robbery 75%; fraud 75%; evasion and fraud 73%; robbery 69%; blackmail 62%; extortion 56%; unjustified obtaining and using loans and other benefits 36%; violation of other people's rights 34%, and criminal offense concealment 24%.

The biggest loss of crime was the crimes of greenery, unauthorized use of someone else's vehicle, abuse of trust, evasion, occupation of land, destruction of someone else's property and illegal immigration. The smallest loss of crime was in criminal offenses, unfounded obtaining and use of credit and other benefits, damage to other people's rights and the criminal offense of concealment.

In the epistemological interpretation of the mentioned data on the loss of crime, it is necessary to have a certain amount of caution because the ways in which statistical data on crimes against property are kept in the police, prosecutor's office and courts differ from the way official statistics are kept in the Republic Statistical Office (Ljubičić, Stephenson, Murrill, & Laličić, 2013).

Finally, the police, the prosecutor's office and the courts use different systems for monitoring cases of property crimes, which raises the issue of comparing data from these institutions. Police statistics are based on the number of reported crimes, and prosecutorial statistics on the number of reported adults, while court statistics are based on the number of cases and court rulings (Ibid.).

Official statistics in the Republic Statistical Office keep data concerning adults against whom criminal proceedings have been instituted / filed criminal charges, as well as data on the results of criminal proceedings against those persons kept in the records of prosecutor's offices and courts. Thus, the database of the Republic Statistical Office, prosecutor's offices and courts is based on two different questionnaires (the prosecutor's office submits

questionnaires SK-I and the courts SK-II) which do not allow merging into a single database. This makes it difficult to measure the progress made in combating property crimes, which necessitates a certain amount of caution in using and concluding these data.

5. Conclusion

For a sense of legal security in a country, it is necessary to provide maximum protection to basic values. Even in ancient Rome, it was believed that a person felt safe if his life, freedom, property and family were protected. Based on the analysis of twenty ways of attacking property on the territory of the Republic of Serbia in the period from 2009 to 2019, we came to the conclusion that in most cases the loss of crime was greater than 50% (except in three cases), which indicates that regulations on crimes against property are unclear, so it makes it difficult for law enforcement agencies to qualify an act or "drainage of wrongdoing" directed towards things and real rights is not good, so any "inadmissible act" is immediately qualified as a crime, although these elements are absent or on the other hand, collecting evidence on this group of crimes is bad and results in such statistics. Whatever the reason, it leads to an overload of state bodies related to criminal proceedings and their management, and the end result is always the inability to efficiently perform the tasks of internal affairs bodies, the prosecutor's office or the court.

In order to improve the situation in this area, the authors of this paper, based on the experiences of developed countries, as well as many years of personal experience propose to the competent state authorities to specify the elements of criminal offenses related to things or property to reduce the number of reported behaviors of adults criminal cases.

In addition, the authors of the paper suggest the need to unify the Criminal Procedure Number (CPN), which ensures the merging of police and court data on criminal offenses against property in the Republic Public Prosecutor's Office, which participates in all phases of criminal proceedings.

The unified data collection model is the basis for the introduction of a new instrument for monitoring the performance of cases in the Republic Prosecutor's Office and the Republic Statistical Office, which would significantly improve the compatibility of statistical data of various state bodies and harmonize standards with developed European Union countries.

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KRIVIČNA DELA PROTIV IMOVINE SAGLEDANA IZ UGLA OSNOVNIH INSTITUTA PRAVA - STVARI I STVARNIH PRAVA

REZIME: U radu su na osnovu podataka iz zvaničnih dokumenata Republičkog zavoda za statistiku i pravosudnih institucija Republike Srbije analizirani i prezentovani rezultati istraživanja koji se odnose na ugrožavanje stvari i stvarnih prava na teritoriji Republike Srbije u periodu od 2009. do 2019. godine. Analizu dostupnih podataka izvršili smo u svrhu otkrivanja „gubitka zločina" u grupi krivičnih dela koja za cilj imaju zaštitu imovine. Svrha ovog rada jeste kauzalna analiza krivičnih dela protiv imovine na celokupnoj teritoriji Republike Srbije sa ciljem otkrivanja uzročnih odnosa i veza između broja prijavljenih, optuženih i osuđenih lica za ova krivična dela, radi utvrđivanja stepena ispoljavanja kriminalnih aktivnosti i preduzimanja sistemskih mera za smanjenje tog gubitka na razumnu meru, u skladu sa standardima razvijenih zemalja.

Ključne reči: *krivična dela protiv imovine, imovina, stvari i stvarna prava.*

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THE INSTRUCTION TO THE AUTHORS
FOR WRITING AND PREPARING MANUSCRIPTS

The Editorial board of the "Law - theory and practice" journal asks the authors to write their manuscripts to be published according to the following instruction.

In the journal there are being published the pieces of work referring to legal, economic and social disciplines. Namely, in the journal there are published: scientific articles, surveys, reviews, the analyses of regulations, the comments on the court decisions, students' papers and other additional texts. The manuscripts are to be sent in English through OJS online platform.(http://casopis.pravni-fakultet.edu.rs/index.php/ltp/about/submissions)

All manuscripts must submit to review. Each scientific paper must be reviewed by at least two reviewers according to the choice of the editorial board.

The editorial board has the right to adjust the manuscript to the editorial rules of the journal.

General information about writing the manuscript:

The manuscript should be written in the Microsoft Word text processor, Times New Roman font of the value of 12 pt, in Latin letters, with a spacing of 1,5. One is supposed to use the value of 25 mm for all margins. The scope of the manuscript can be of 12 pages at most in an A4 format including a text, tables, pictures, graphs, literature and other additional material.

The title-page of the paper should contain the title of the paper work in English, and below it there should be written the same thing in Serbian of the font size of 14 pt, Bold. After that, there is a spacing and, then, there should be stated the author's name and surname, his/her title, affiliation (the work place **with obligatory stating the name of the country too)**, an e-mail address and contact phone, the font size of 12 pt. If the author has his/her ORCID number, it should be stated immediately after his/her name and surname. For more information about ORCID iD, please visit https://orcid.org and after the registration insert your ORCID iD number.

Then, there is a spacing, and after that there should be written an abstract of the length to 250 words in English, and in Serbian below it of

the font size of 12 pt. An abstract represents a brief informative contents review of the article enabling the reader's quick and precise judgment of its relevance. The authors have to explain the goal of their research or to state the reason why they decided to write the article. Then, it is needed the methods being used in a research to be described including a short description of the results being reached in a research.

Key words are stated after one line of a spacing below the abstract written in English, and, also, in Serbian below it. There should maximally be five of them, of the font size of 12 pt, Italic. Then comes a two-line spacing and the text of the paper work.

Manuscript should be written concisely and intelligibly in a logical order which, according to the rule, includes the following: an introduction, the working out of the topic and a conclusion. The letters of the basic text should be of the font size of 12 pt. Titles and subtitles in the text are supposed to be of the font size of 12 pt, Bold.

The name and number of illustrations (diagrams, photographs, graphs) should be represented in the middle of the line above the illustration, the font size of 12 pt. The name and number of a table should also be represented in the middle of the line above the table, the font size of 12 pt. Below the illustration or table, it is obligatory the source to be stated ("Source:…"), the font size of 10 pt. If the results of the author's research are represented in the form of a graph or table, there should be stated as a source below the illustration or table: Author's research.

If the author of the text writes a thank-you note or states the project references within which the text has been written and the like, he/she does it in a special section – Acknowledgments, which, according to the ordinal number, comes after the Conclusion, and before the author's affiliation and the summery of the text written in Serbian.

Use APA style to write references (The hand book for publishing, the American Psychological Association) as an international standard for writing references. Remarks, namely footnotes, may contain additional explanations or comments referring to the text. Footnotes are written in a font size of 10 pt.

Within the APA style, the used source is stated **inside the text,** in the way the elements (the author, the year of publication, the page number where the quoted part is) are indicated in parentheses immediately before the full stop and separated by a comma.

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If the cited source has been written by one author:

When a sentence contains the author's name and his/her cited words, then, after the author's name, there is stated the year of publication of the cited text in the brackets. At the end of the sentence, it is necessary the page number on which there is a sentence from the cited text to be indicated:

There is an example:

As Besermenji (2007) points out, "it is especially present the problem of the air pollution, which is explicitly a consequence of an extremely low level of ecological awareness as well as the lack of professional education in the field of environment" (p. 496).

In the case when the author is not mentioned in the sentence, his/her surname, the year of publication of the paper work and the page number in the paper should be put in brackets and at the end of the sentence.

There is an example:

Also, "rural tourism is expected to act as one of the tools for sustainable rural development" (Ivolga, 2014, p. 331).

A note: If a citation has been made by paraphrasing or resuming, then it is not necessary the page number to be stated.

There is an example:

The environment represents everything that surrounds us, namely everything with which a human's living and producing activity is either directly or indirectly connected (Hamidović, 2012).

If the cited source has been written by two authors:

There should be put "and" or "&" between the authors' surnames depending on the fact whether the authors are mentioned in the sentence or not.

There are some examples:

Chaudhry and Gupta (2010) state that as many as 75% of the world's poor live in the rural areas and more than one-third of rural areas are in arid and semiarid regions.

Hence, "rural development is considered as a complex mesh of networks in which resources are mobilized and in which the control of the process consists of interplay between local and external forces" (Papić & Bogdanov, 2015, p. 1080).

If the cited source has been written by three to five authors:

When such a source is cited for the first time, all the authors should be stated:

There is an example:

(Cvijanović, Matijašević Obradović & Škorić, 2017)

When this source is later cited again, there should be stated only the first author's surname and added "et al.".

There is an example:

(Cvijanović et al., 2017)

If the cited source has been written by six and more authors:

By the first and all further citations, the first author's surname should be stated and added "et al.".

There is an example:

(Savić et al., 2010)

If the author of the cited text is an organization:

In the case when the author of the cited text is an organization, then its name should be put in brackets as an author of the text. If the organization has a known abbreviated name, then one has to write this abbreviated name in a square bracket, after the full name, in the first citation, while any further citation should be marked by this abbreviated name.

There is an example:

the first citation: (Serbian Academy of Sciences and Arts [SASA], 2014)

further citations: (SASA, 2014)

If the authors of the cited text have the same surname:

In the case of the authors having the same surname, there should be used the initials of their names in order to avoid the confusion.

There is an example:

The attitude made by D. Savić (2017) is presented...

If there are cited several references of the same author from the same year:

If there are two or more references cited from the same author and from the same year, then, after the fact of the year, there have to be added the marks "a", "b", etc.

There is an example:
(Dragojlović, 2018a)
(Dragojlović, 2018b)

If there exist two or more texts in one citation:

When one cites two or more texts in one citation, then, in brackets, there are stated the surnames of the authors of original texts in the order of publication and they are separated by a semicolon.

There is an example:

Obviously, living and working in rural areas has always been connected with specific material and symbolical relations to nature (Milbourne, 2003; Castree & Braun, 2006).

If there is cited the newspaper article with the stated author:

There is an example:

In *NS uživo* there was published (Dragojlović, 2021) that...

In the list of the used references, this reference should be written in the following way: Dragojlović, J. (2021). Anketirani Novosađani za vraćanje smrtne kazne u Ustav [Novi Sad residents surveyed to return the death penalty to the Constitution]. *NS uživo*, January 22.

If there is cited the newspaper article without the author being stated:

There is an example:

Published in *Politika* (2012)

In the list of the used references, this reference should be written in the following way: *Politika*. (2012). Straževica gotova za dva meseca [Straževica finished in two months]. February 1.

If the personal correspondence is cited:

The example: According to Nikolić's claims (2020),

In the list of the used references, this reference should be written in the following way: Nikolić, A. (2020). Pismo autoru [Letter to the author], 21. novembar.

If it is cited the text in press, at the end of the reference, and before the full stop, it is obligatory to add "in press".

If the court decisions, the praxis of the European court for human rights, and other sources from both national and international court praxis are cited, a reference should contain as much precise facts as it is possible: the type and number of the decision, the date when it was made, the publication where it was published.

The example in the text: (The Decision of the Superior court in Belgrade - A special department K.Po1 no. 276/10 from 26th January 2012)

The example in the text: (Borodin v Russia, par. 166.)

A note:

The sources from the court praxis **are not stated** in the list of the used literature. A full reference from the court praxis **is stated** in a footnote. While citing the European court for human rights praxis there should be indicated the number of the submitted petition.

There is an example of a reference in a footnote:

As it is stated in the Decision of the Superior court in Belgrade - A special department K.Po1 no. 276/10 from 26th January 2012 Intermex (2012). Bilten Višeg suda u Beogradu [Bulletin of the High Court in Belgrade], 87, p. 47.

Borodin v Russia, the petition no. 41867/04, the sentence ECHR, 6. 2. 2013, par. 166.

If the laws and other regulations are cited:

When citing a legal text or other regulation, in the text there should be stated a full name of law or other regulation including the year when the law or regulation was enforced.

There is an example:

(The Code of criminal procedure, 2011)

(The Book of rules on the content of the decision on conducting the procedure of public procurement made by several consignees, 2015)

This rule is also applied to laws and other regulations not being in force any longer.

There is an example:

(The Criminal law act of Republic of Serbia, 1977)

When citing the international regulations, in the text it is enough to state a shortened name of the document together with its number and year when it was accepted.

There is an example:

(Regulation No. 1052/2013) ili (Directive 2013/32)

If there is cited the text of the unknown year of publication or the unknown author's paper work:

In the paper work, such a kind of text should be cited in the way that in the place of the year there is stated "n.d." (non dated).

There is an example:

Their significance for parliamentary processes is unmeasureable (Ostrogorski, n.d.).

If there is a paper work of the unknown author used in a manuscript, there will be stated the title of the paper being cited together with the year, if it is known.

There is an example:

All these are confirmed by a mixed, objective-subjective theory (The elements of a criminal offense, 1986, p. 13).

An important note:

The cited sources (regardless the fact in which language they have been written) are not supposed to be translated into English, except the title of the paper work (publications, a legal act or bylaw) which should be translated and written in a square bracket.

The example:

1.) Matijašević Obradović, J. (2017). Značaj zaštite životne sredine za razvoj ekoturizma u Srbiji [The importance of environmental protection for the development of ecotourism in Serbia]. *Agroekonomika*, *46* (75), pp. 21-30.

2.) Jovašević, D. (2017). *Krivična dela ubistva* [*Murder as a Crime*]. Beograd: Institut za kriminološka i sociološka istraživanja.

3.) Uredba o ekološkoj mreži Vlade Republike Srbije [The Ecological Network Decree of the Government of the Republic of Serbia]. *Službeni glasnik RS*, no. 102/10

4.) Zakon o turizmu [The Law on Tourism]. *Službeni glasnik RS*, no. 17/19

At the end of each text, in the section under the name of "**References**", it is obligatory to state the list of all cited references according to an alphabetical order. The titles in foreign languages beginning with definite or indefinite articles ("a", "the", "Die", ...) are ordered as if the article does not exist. The reference list should only include the works that have been published or accepted for publication.

The editorial board insists on the references of recent date, which will specially be taken into account while choosing the manuscripts to be published. At the end of each reference, it is obligatory to state a DOI number, if the cited reference contains it. If the cited reference does not contain a DOI number, the author can refer to the URL address.

The example of the stated reference together with a DOI number:

Počuča M., & Matijašević Obradović, J. (2018). The Importance of Evidence Collection in Procedures for Criminal Acts in the Field of Economic Crime in Serbia. In: Meško, G., et al. (eds.), *Criminal Justice and Security in Central and Eastern Europe: From Common Sense to Evidence-based Policy-making* (pp. 671-681). Maribor: Faculty of Criminal Justice and Security and University of Maribor Press. DOI: 10.18690/978-961-286-174-2

The example of the stated reference together with an URL address:

Milosavljević, B. (2015). Pravni okvir i praksa primene posebnih postupaka i mera za tajno prikupljanje podataka u Republici Srbiji [Legal framework and practice of application of special procedures and measures for secret data collection in the Republic of Serbia]. In: Petrović, P. (ured.), *Posebne mere tajnog prikupljanja podataka: između zakona i sudske prakse* [*Special measures for secret data collection: between law and case law*] (pp. 5-33). Beograd: Beogradski centar za bezbednosnu politiku. Downloaded 2021, January 15 from https://bezbednost.org/wp-content/uploads/2020/06/posebne_mere_tajnog_prikupljanja_podataka_-_vodic_.pdf

The examples of the used references being stated at the end of the paper work:

References:

1. Agencija za privredne registre. *Privredna društva* [*Companies*]. Downloaded 2020, January 10 from https://www.apr.gov.rs/o-agenciji.1902.html
2. *California Secretary of State*. Downloaded 2020, December 15 from https://www.sos.ca.gov/business-programs/
3. Dukić-Mijatović, M. (2011). Korporativno upravljanje i kompanijsko pravo Republike Srbije [Corporate Governance and Companies Business Law of the Republic of Serbia]. *Pravo -teorija i praksa*, *28* (1-3), pp. 15-22.
4. Dragojlović, J., & Bingulac, N. (2019). *Penologija između teorije i prakse* [*Penology between theory and practice*]. Novi Sad: Pravni fakultet za privredu i pravosuđe u Novom Sadu.
5. Dragojlović, J. (2021). Anketirani Novosađani za vraćanje smrtne kazne u Ustav [Novi Sad residents surveyed to return the death penalty to the Constitution]. *NS uživo*, January 22.
6. Gopalsamy, N. (2016). *A Guide to Corporate Governance*. New Delhi: New Age International.
7. Jesover, F., & Kirkpatrick, G. (2005). The Revised OECD Principles of Corporate Governance and their Relevance to Non-OECD Countries. *Corporate Governance: An International Review*, *13* (2), pp. 127-136. DOI: 10.1111/j.1467-8683.2005.00412.x
8. Milosavljević, B. (2015). Pravni okvir i praksa primene posebnih postupaka i mera za tajno prikupljanje podataka u Republici Srbiji [Legal framework and practice of application of special procedures and measures for secret data collection in the Republic of Serbia]. In: Petrović, P. (ured.), *Posebne mere tajnog prikupljanja podataka: između zakona i sudske prakse* [*Special measures for secret data collection: between law and case law*] (pp. 5-33). Beograd: Beogradski centar za bezbednosnu politiku. Downloaded 2021, January 15 from https://bezbednost.org/wp-content/uploads/2020/06/posebne_mere_tajnog_prikupljanja_podataka_-_vodic_.pdf
9. Počuča M., & Matijašević Obradović, J. (2018). The Importance of Evidence Collection in Procedures for Criminal Acts in the Field of Economic Crime in Serbia. In: Meško, G., et al. (eds.), *Criminal Justice and Security in Central and Eastern Europe: From Common Sense to Evidence-based Policy-making* (pp. 671-681). Maribor: Faculty of

Criminal Justice and Security and University of Maribor Press. DOI: 10.18690/978-961-286-174-2
10. Regulation (EU) No. 1052/2013 establishing the European Border Surveillance System (Eurosur), OJ L 295 of 6/11/2013.
11. Škorić, S. (2016). *Uticaj poslovnog imena privrednog društva na njegovo poslovanje - doktorska disertacija* [*The influence of the business name of the company on its business - doctoral thesis*]. Novi Sad: Pravni fakultet za privredu i pravosuđe u Novom Sadu.
12. Škulić, M. (2007). *Krivično procesno pravo* [*Criminal Procedural Law*]. Beograd: Pravni fakultet Univerziteta u Beogradu i JP Službeni glasnik.
13. Uredba o ekološkoj mreži Vlade Republike Srbije [The Ecological Network Decree of the Government of the Republic of Serbia]. *Službeni glasnik RS*, br. 102/10.
14. Veljković, N. (2017*). Indikatori održivog razvoja: Srbija i svet* [*Sustainable development indicators: Serbia and the world*]. Downloaded 2017, October 22 from http://indicator.sepa.gov.rs/o-indikatori
15. Zakonik o krivičnom postupku [Criminal Procedure Code]. *Službeni glasnik RS,* no. 72/11, 101/11, 121/12, 32/13, 45/13, 55/14 and 35/19.