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C O N T E N T S

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INJURY OF HUMAN RIGHTS AND THE RIGHT TO LIFE DURING THE COVID-19 PANDEMIC IN THE OLDER POPULATION

ABSTRACT: It has been more than a year since the Covid-19 pandemic began. Millions of people continue to die around the world. Most of them are elderly, but their importance is not downplayed for this reason. The indiscriminate practices being carried out all over the world, in terms of the suffered abandonment, make us reflect in favor of the study of the protection systems of the most vulnerable people. It also includes the attempt to preserve their fundamental rights at the global level, and, above all, the legal point of view. Consequently, and despite the improvement in the situation produced by the application of the different vaccines against Covid-19, nothing prevents this from being repeated in the future if we do not establish the appropriate measures to assure a real and effective protection. The improvement that is assumed and expected should not refer to the field of health only, but also to the rule of law in which the majority of the world population find themselves regarding the approval of the necessary regulations providing the desired results. Therefore, the essence of this paper is searching for legal solutions to protect the human rights of the most vulnerable people - the elders, through the study of the right to their health protection and the functioning of the established systems concerning this field. The main objective is articulating the

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necessary strategies and instruments that guarantee the integrity of the elderly people throughout the planet.

Keywords: *Fundamental rights, vulnerability, protection, Covid-19.*

1. Introduction

"COVID-19 pandemic exposed all the shortcomings of global and national societies. The world was taken by insecurity, isolation, and confusion, which consequentially carry certain security challenges, in a combination the world has not previously seen. Some of these challenges are a consequence of the pandemic itself, but another part of challenges arose from the reaction of countries to the pandemic and changes in the everyday lives of individuals" (Bjelajac & Filipović, 2020, p. 9). After the last year lived in relation to the Covid-19 pandemic and due to its special devastating incidence due to the increase in deaths in the elderly due to lack of attention in terms of health protection. This circumstance invites us to reflect in favor of the fight and defense of the rights of all citizens, especially the older ones for having been the most affected. Since the Charter of the United Nations and Statute of the International Court of Justice (1945) and later in successive international texts on the diversity of aging and its respect for dignity (Martinson & Berridge, 2014, p. 58), that have been developed to this day, they have highlighted the need to eliminate the situation of invisibility of the older group and consequently, guarantee their effective protection from all spheres, both social, political and economic. To do this, we must analyze the past and present situation and, as a consequence, what to do in the future in response to the needs and weaknesses found in favor of improving the quality of life of the elderly. For this reason, in this research work the legal situation of the Right to health of the elderly will be studied, not only at the national level of the Spanish State but also the influence that has been transferred from the various international texts that have been taking place, from the Charter of Human Rights of 1948, to even at European level, through its derived Law. In short, it is inexcusable to know the situation of our elders in favor of the defense of their right to health in all contexts of their lives and much more in the health context that we have been experiencing since the start of the pandemic.

2. Methodology

With the aim of studying the scenario that has occurred in the Covid-19 pandemic and its impact on the elderly in terms of their rights (Díez-Picazo, 2008, pp. 27–30), especially in terms of their hope and quality of life, as well as protection against illness and death, this study is proposed where, in the first place, the current legal situation in relation to the protection of the rights of the elderly and its effectiveness will be analyzed. In this way, we can better recognize the weakest points of its legal regulation and the needs that have arisen as a result of Covid-19.

Secondly, it will be observed whether the protection of the elderly is effectively fulfilled with the protection of rights as important as the protection of health, life and equality.

Likewise, the situation of the existing residence model in the Spanish system will be evaluated with the aim of eliminating the models that produce greater vulnerability in the elderly and that least respect their rights, in order to seek a new model that is more respectful of the preferences of the older people and their diversity.

And, finally, it will conclude with the enhancement of this group and its visualization in the life of the community, highlighting its importance both in the past and in the future, proposing proposals to improve the elderly's quality of life.

3. Legal regime of protection for the elderly, the international, European, and Spanish system, joining forces

3.1. The situation of the elderly and their social recognition

It is evident that there is contempt for old age in society because it makes this group invisible in a subtle way. Those people who in previous decades raised the country are now despised by the circumstance of age. For this reason, various international texts on the need to protect dignity have been drawn up since the Second World Warand the quality of life of the elderly and encourage their active participation in all areas of community life. Despite its lack of promotion in the social participation of this group is clear, in this last year the urgent need for the protection of the elderly has become even more evident, since the discriminatory treatment that has been dispensed to them has been profoundly evident during the Covid-19 pandemic, in particular, in the care and attention to their health and especiallyto those people who lived

in residential centers, since their abandonment has been so evident by the multitude of cases of death and treatment of lack of dignity in terms of the absence of health care in the moments prior to his death.

Over the centuries, the perception of old age has been changing since ancient times, society underestimated this personal circumstance through invisibility and abandonment in a subtle way. Today it is still a constant in many areas of life because those people who in previous decades raised the country are now underestimated because of their age. For this reason, various international texts have been drafted since the Second World War (Liang & Luo, 2012, p. 327) on the need to protect the dignity and quality of life of older persons, promoting their active participation in all areas of community life. Despite its lack of notoriety in the social participation of this group being clear, in recent years the urgent need for protection of this vulnerable group has become even more evident, since the discriminatory treatment that has been dispensed during the Covid-19 pandemic, above all, in the care and attention to their health and especially to those people who lived in residential centers, since their abandonment has been so evident caused by the multitude of cases of death and treatment of lack of dignity in terms of the absence of health care in moments prior to their death, in the scarcity of resources when it comes to saving their lives and not only in Spain but worldwide.

3.2. Legal regime for the protection of the elderly in the international scenario

As has already been mentioned, the concept of health protection was born after the Second World War motivated by its great harmful impact both physically and psychologically on the survivors. We can see it in the declarations of the United Nations Organization (UN) of 1946, where in its article 25, it collected the right of the person to an adequate standard of living, establishing the criteria of health and well-being. Subsequently, the UN created the World Health Organization in 1948, as an instrument for the promotion and protection of health worldwide. In 1966, article 12 of the International Covenant on Economic and Social Rights recognized the right to both physical and mental health, providing the concept of mental health worthy of protection as an essential protective element for adequate health.

Diversity of international texts followed another supporting such conception, thus in the Inter-American Convention on the protection of the Human Rights of the Elderly Persons of 1991, a new principle on the protection

of the health of the elderly was introduced in its preamble, recognizing the need to guarantee every person who ages a minimum of security in all areas of their life, in a full, autonomous and independent way, related to health. According to the principles of Resolution 46/91 of the United Nations (1991), the elderly must be protected in the different spheres of social life, not only from the point of view of maintaining their basic needs such as food, water, and housing but in attention to participation in working life, to obtain income, to care for their health, to live in safe environments (WHO, 2002), to be integrated into society, to receive decent treatment without any discrimination, among others. All this comes to develop the recognition of older persons established in the Charter of the United Nations and in compliance with the International Plan of Action on aging (1982) approved by the World Assembly on Aging in Resolution 37/51 of December 3. In short, this Resolution aimed to strengthen the quality of life of the elderly because it considered that the increase in life expectancy was an indication, not only of living longer but of living better and in quality of life. This Resolution encouraged States to introduce a series of basic principles of protection for the elderly, divided into four blocks: independence, participation, care, and self-realization.

In the 1992 Declaration on Aging of October 16, the need to integrate older persons and protect all social, political, and economic contexts was proclaimed, echoing the aging of the population at a global level. In 1999, the General Assembly of the United Nations Organization proclaimed that year as the International of the elderly, and October 1 of each year its international day.

Later, in 2002, the Second World Assembly on Aging was held in Madrid, adopting a Political Declaration and the International Plan of Action on Aging in Madrid with the fundamental objective of seeking a change of attitude regarding policies and strategies to further promote the capabilities of our elders, as well as prioritizing the protection of their health and well-being in their own environment (Tejero Morales & Cerdeña Macías, 2017).

Other subsequent regional instruments insist on these protective principles of health with the elderly, such as the Regional Implementation Strategy for Latin America and the Caribbean of the Madrid International Plan of Action on Aging (2003), the Declaration of Brasilia (2007), the Plan of Action of the Pan American Health Organization on the health of older persons, including active and healthy aging (2009), the Declaration of Commitment of Port of Spain (2009), and the Charter of San José on the rights of older persons in Latin America and the Caribbean (2012).

3.3. Legal regime for the protection of the elderly in the European space

Undoubtedly, the European Union is the result of a clear international effort through a long historical evolution with a prolonged objective for centuries of joining forces so that, initially, it reinforces a common market and later, gradually opens up to other lines of performance. However, its evolution has given rise to the development of different strategies through the Treaties of the Member States of the Union to become, today, a space with much more than economic objectives, already entering the political and social ones that integrate to all citizens equally.

The first protective instrument in the European space was the European Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights, adopted by the Council of Europe on November 4, 1950. This instrument which was inspired by the Universal Declaration of Human Rights of 1948 had as its fundamental task the protection of human rights and fundamental freedoms of the person and that for its control was judicially bound. However, regarding the protection of the health of the elderly, it was not expressed explicitly, but the spirit of protection and integration was apparent in its articles, especially in article 14, in terms of non-discrimination.

As a concept of the principle of health protection within the European Union, it appears for the first time in the Maastricht Treaty in 1992, in its article 129-129.

We cannot forget the resolution of the European Parliament on measures in favor of the elderly, of 1994, where it collects a series of proposals on the rights of the elderly that deal with the protective regimes of social security and their convergence between Member States, controls on early retirement, informal care and intergenerational support.

In the Treaty of Amsterdam in 1997 in its articles 3 and 152, it further promoted community competence in public health, involving all political forces in its mission. Subsequently, this concept was included in the failed European Constitution, later being included in the Treaty of Lisbon as a goal, the inclusion of health with a specific interest, considering that this situation directly affects economic growth (Del Llano, 2021), opening a new point of view necessary for its recognition and protection (Guimarães & Freire, 2007).

From then on, a multitude of documents and declarations did not stop succeeding each other in favor of their protection and enhancement of the right

to health of the elderly and their own worth. Thus, we can highlight, among others, due to its importance and impact, Recommendation 98/9 (1998) on the protection of dependency, as the fourth pillar of well-being (Tejero Morales & Cerdeña Macías, 2017), which would mark a before and after, since the situation of dependency would begin to be considered as a right subjective for the Member States of the European Union.

And, finally, highlight the Communication from the Commission to the Council and the European Parliament, of March 18, 2002, the contribution of the European Union to the Second World Assembly on Ageing, which highlights the need to integrate older people, dependency, and disability in all spheres of social life, through the promotion of healthy lifestyle education.

Given the international instruments for the protection of the health of citizens without any discrimination and, therefore, that of the elderly, it is obvious to elucidate the urgent need in which we find ourselves to ensure that these principles and values that emerge are effective and effective, guaranteed by the public authorities in a responsible manner.

3.4. Legal regime for the protection of the elderly in Spain

The Spanish Constitution (1978) in its article 9.2 declares that it corresponds directly to the public powers to promote the conditions of freedom and equality of individuals to achieve fullness and participate in all areas of community life. In its article 50, it also adds that these same public authorities have the obligation to guarantee adequate and up-to-date pensions for the elderly and must promote their well-being through an adequate health and social services system. In view of the foregoing, there is no doubt that our system reinforces the discriminatory rejection of any individual, as established in article 14 of the Constitution, where it insists on non-discrimination for any social circumstance, in the same way as Throughout its articles it refers to the promotion of health protection (Guerra Vaquero, 2015), the well-being of the individual, attributing the sphere of competence to the autonomous communities by the principle of proximity so that its effects are as effective as possible. Law 39/2006 of December 14, on the Promotion of Personal Autonomy and Attention to people in a situation of dependency, which meant the recognition of protection with legal linkage, that is, as a subjective right of protection to the situation of vulnerability due to the circumstance of need of a third person or disability in the exercise of their basic needs.

3.5. Current situation of the protection of the elderly

Despite all the national and international efforts to promote the protection of the elderly, today, it seems that it is not enough, since the devastating results that we have been able to appreciate during the period of the Covid-19 pandemic have shown that the higher mortality rates, without a doubt, have been in the group over 64 years of age, according to the Momo[1] institution, which studies excess mortality.

Thus, we can analyze how the health crisis has affected the quality of life of older people and their hope. As is well known, since our recent experience, Covid-19 has considerably affected the direction of our lives, limiting them to a great extent. However, if this is the case in the middle-aged population, in the elderly it has caused a great disaster and not only in terms of mortality, which has been disastrous, but also due to abandonment, accusation of invisibility and loss of basic rights, leaving questioning their protection system and further evidencing their vulnerability.

In 2011, the White Paper on active aging (published in 2011 by INSERSO) was published after the II World Assembly on Aging held in 2002 in Madrid and the Organization of the Ministerial Conference of the United Nations Economic Region for Europe (UNECE), held in León in 2007 in matter of aging, with the fundamental objective of recognizing a profound change in the personal and social characteristics of the elderly who demand new needs aimed at prevention and health care, independent living for as long as possible, active participation in the community and training throughout his life. It is the result of the absolute reflection of the definition of aging of the World Health Organization (2015), giving a new vision of aging as a group with a positive value that fulfills its function.

According to HelpAge Internacional, the international global network dedicated to protecting the human rights of the elderly, through its 3rd report,

[1] Despite all the national and international efforts to promote the protection of the elderly, today, it seems that it is not enough, since the devastating results that we have been able to appreciate during the period of the Covid-19 pandemic have shown that the higher mortality rates, without a doubt, have been in the group over 64 years of age, according to the Momo institution, which studies excess mortality. MoMo. Government of Spain. Institution that reports on daily mortality from all causes is obtained from the General Registry of Civil and Notary Registries of the Ministry of Justice, distributed among all the Autonomous Communities and which includes the 52 provincial capitals. During 2020, the daily Mortality Monitoring System (MoMo) in Spain includes deaths from all causes from 3,929 computerized civil registries, which represent 92% of the Spanish population. Estimates of expected mortality are made using restrictive models of historical averages based on observed mortality from January 1, 2008 up to one year prior to the current date, from the National Institute of Statistics. Source: Instituto de Salud Carlos III. Downloaded 2021, April, 05 from http://isciii.es

denounced the need to protect and promote the rights of the elderly as they age. It highlights the need to value advanced age, posing it as a strength since age should be considered as a time of personal growth and leadership capacity due to the knowledge and experiences acquired. However, discrimination that occurs in this age range, violence, and abuse are denounced. It also highlights that, even so, there is progress, but there is still a long way to go and continue in order to support the elderly so that they are fully involved in all areas.

Consequently, the UN, through the Secretary-General, Antonio Gutiérrez, presented on May 1, 2020, a report on the impact that Covid-19 was having on older people. In it, the rights that are being injured in the elderly are evidenced, such as life, health (Martínez, 2006, pp. 129–150), personal autonomy, safety, abuse, and neglect, posing a clear risk to the social and economic well-being of the elderly.

An expert (Rosa Kornfeld-Matte) from the United Nations in Geneva, on March 27, 2020, already stated that everyone's obligation is to protect our elders and that in the pandemic the situation of poverty, access to limited to health and seclusion in small spaces and hospices, detecting the need to apply holistic protection strategies to the elderly, and even claiming the need for equal and fair health treatment for this age range, eliminating the prioritization of health care due to age, discriminating its use on the basis of age or disability, being applied exclusively by scientific criteria. Likewise, she made an appeal for solidarity with the elderly and their caregivers.

The situation that has been experienced in the scenarios of residential centers worldwide, has called into question the lack of care and protection of our elders, the absence of necessary sanitary material in these places, and of necessary personnel. And all this has been glimpsed before the experiences lived during the pandemic, in its most initial moment, when the data of a considerably high number in terms of the mortality of residents in centers, both medicalized and not, followed each other day after day. Despite the endowment of health resources that many of them possessed and the assistance of their health personnel, it has been possible to demonstrate patent discrimination in terms of referral to hospitals and care in the same of this sector of the vulnerable population, our elders. and the disabled, giving rise to inefficient and ineffective management, despite being considered a priority population sector. All the indicators observed from the social agents have coincided with the need to change the residential system until now, raising the need to model the residential system, so that health protection, integration of the full life of the community in an active way, making their rights effective.

3.6. Proposals for the protection of the dignity of the elderly

In view of the above, we cannot forget that the subjective conception of the elderly has been changing, reaching a fairly positive position in the last decade, advancing in visualization and protection. However, as a result of the Covid-19 pandemic, we have been able to verify that the efforts made have taken a step backward, because much to our regret, we have seen how the dignity of the elderly during the pandemic has been compromised by not giving them the attention that corresponded to them, being victims of abandonment in residential centers especially, neglecting their health to the point of causing death. While it is true that no State was prepared to face this challenge that was thrown at us, it is also true that despite the extraordinary measures of protection and efforts to save lives, it is evident that our elders have been left aside for reasons of age, especially at the time of choosing which life to save in the health system, if they came to it, prioritizing care for the youngest person, carrying out discriminatory behavior prohibited by the Spanish legal system.

Given the lack of attention and neglect of our elders in their subjective right to health protection and fundamentally their right to life, they have been abandoned to their fate under the pretext of residing in centers, since they are not prepared in resources health to beat the ailments and symptoms derived from the virus. During the time of crisis, different social groups along with the media echoed this situation, repeatedly denouncing these practices. To avoid these situations in the future, we must reflect so that what happens does not happen again and that older people are treated equally, as well as propose new models of protection that are more individualized and respectful of their autonomy and preferences, as well as the need for a change in the care system in residential centers. Despite the approval of Law 39/2006, on dependency, where a new subjective right of protection for dependency is developed, there is still much to do, and even more so, if its effectiveness continues to depend on political ideologies and they continue to be considered exchange coins. The protection of dependency and the support of active aging must have a stable investment, maintained over time and under the co-responsibility of all social agents because in this way its development will be more effective and lasting.

4. Future research directions

A line of research is proposed around the new models of residence in which the elderly person can identify as a home of their own, that caregivers are part of the center in an integral way, respecting their job stability, to

maintain a lasting connection with residents and referents in the center. In addition, home care models will be studied so that the elderly can be cared for at home for as long as possible if they so desire.

5. Conclusions

Given the health crisis, the clear need to enhance the protection of the rights of the elderly has been proven; failures of both the social and health system have been detected in residential centers especially. The need to change residence models has been evidenced, as well as support for the elderly in their own environment, with the fundamental objective of eliminating their invisibility and promoting their development.

Once we have seen what happened to the elderly and analyzed their situation during the covid-19 pandemic period, we have reached the certainty that there really is a disadvantageous situation in terms of the defense and protection of their rights, especially due to their situation of dependency in some cases or simply because they are not actively in society. There has been an urgent loss of rights in terms of their attention and priorities for consideration by the health and social systems, giving rise to a notable violation of rights such as equality, health, and in some cases, even human rights of life. Already from the UN, on May 1, 2020, the imminent discrimination of the elderly was denounced to the entire world community, and they tried to value their role as a key piece that was and continues to be in society. For this reason, from here the need arises to work in order to visualize this group, to offer them real and effective protection from all contexts, and enhance their potential in the community because they really fulfill their function of great importance for society.

It is important to highlight the importance of the role that older people have had and still have in the past, as well as in the present, those who have fought for what we have and are today, those who have fought for our rights and quality of life. It is necessary that we seek the appropriate legal measures that promote the quality of life, hope, and the active participation of life in the community, not only from international contexts, but to transfer it to the States effectively because in that way we will achieve a much fairer world.

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POVREDA LJUDSKIH PRAVA I PRAVA NA ŽIVOT TOKOM PANDEMIJE COVID-19 KOD STARIJE POPULACIJE

REZIME: Prošlo je više od godinu dana od početka pandemije Covid-19 i milioni ljudi i dalje umiru širom sveta. Većina njih su starije životne dobi. Neselektivne prakse koje se sprovode širom sveta, u smislu pretrpljenog napuštanja, teraju nas da se osvrnemo na proučavanje sistema zaštite najugroženijih ljudi, kao i na pokušaj očuvanja njihovih osnovnih prava na globalnom nivou i, pre svega, sa pravne tačke gledišta. Shodno tome, i uprkos poboljšanju situacije izazvanom primenom različitih vakcina protiv Covid-19, ništa ne sprečava da se ovo ponovi u budućnosti ako ne uspostavimo odgovarajuće mere da obezbedimo stvarnu i efikasnu zaštitu. Poboljšanje koje se pretpostavlja i očekuje ne bi trebalo da bude samo iz oblasti zdravstva, već iz pravne države u kojoj se nalazi većina svetske populacije u pogledu usvajanja neophodnih propisa koji daju željene rezultate. Stoga, opravdanost i suština ovog rada jeste iznalaženje zakonskih rešenja koja će se baviti zaštitom ljudskih prava najugroženijeg dela populacije – starijih ljudi, kroz proučavanje prava na njihovu zdravstvenu zaštitu i funkcionisanje sistema koji su za to uspostavljeni, a sa glavnim ciljem da se opredele neophodni strategijski akti i instrumenti koji garantuju integritet starijih širom planete.

Ključne reči: o*snovna prava, ranjivost, zaštita, Covid-19.*

References

1. Bjelajac, Ž., & M. Filipović, A. (2020). COVID-19 Pandemic – Security Challenges, Risks, and Threats. *Culture of Polis - Journal for Nurturing of Democratic Political Culture, 17*(2), pp. 9–23. Downloaded 2021, June 20 from https://kpolisa.com/index.php/kp/article/view/262
2. Charter of the United Nations and Statute of the International Court of Justice, of October 24, 1945, San Francisco

3. Del Llano Nuñez-Corzes, A. (2021). El Derecho de la Salud Pública: una propuesta de mejora normativa a propósito de la Covid-19 [Public Health Law: a proposal for regulatory improvement regarding Covid-19]. *Derecho y Salud*, *31* (2), *in print*
4. Díez-Picazo, L. M. (2008). *Sistema de Derechos Fundamentales* [*Fundamental Rights System*]. Madrid: Civitas
5. European Commission, Treaty of the European Union*, Official Gazette*, no. C191 of July 29, 1992
6. European Commission, Treaty of Amsterdam amending the Treaty on European Union, the Constitutive Treaties of the European Communities and certain related acts. *Official Gazette*, no. C340 of November 10, 1997
7. Guimarães, L. & Freire, J. M. (2007). *Health issues in the European Union: its impact on Spanish health*. Public health notebooks 23 (suppl 2). Downloaded 2021, June 25 from https://doi.org/10.1590/S0102-311X2007001400004
8. Guerra Vaquero, A. Y. (2015). La protección de la salud y del derecho a la integridad física en tiempos de crisis [Health and safety protection in physical integrity in crisis times]. *Revista de Derecho de la UNED (RDUNED*), 16, pp. 1265–1292
9. Instituto de Salud Carlos III. Downloaded 2021, April, 05 from http://isciii.es
10. Law 39/2006 of December 14, on the Promotion of Personal Autonomy and Attention to people in a situation of dependency
11. Liang, J. & Luo, B. (2012). Toward a discourse shift in social gerontology: From successful aging to harmonious aging. *Journal of Aging Studies*, *26* (3), pp. 327–334
12. Martinson, M. & Berridge, C. (2014). Successful aging and its discontents: A systematic review of the social gerontology literature. *Gerontologist*, *55* (1), pp. 58–69
13. Recommendation No. (98) 9 of the Committee of Ministers to member states regarding dependency, from September 18, 1998
14. Resolution 46/91 of December 16, 1991 of the General Assembly of the United Nations (UN). Downloaded 2021, May 25 from https://www.refworld.org/docid/3b00f22548.html
15. Tejero Morales, S. & Cerdeña Macías, I. J. (2017). Políticas sociales y envejecimiento en la Unión Europea [Social policies and aging in the European Union]. *Revisión bibliográfica TOG. A Coruña*, 1*4* (26), pp. 470–478

16. The Spanish Constitution, passed by the Cortes Generales in Plenary Meetings of the Congress of Deputies and the Senate of December 29, 1978
17. Vienna International Plan of Action on Ageing, World Assembly on Aging held from July 26 to August 6, 1982, Vienna (Austria)
18. World Health Organization – WHO (2002). Envejecimiento activo: un marco político [Active ageing: a policy framework]. *Revista Española de geriatría*, *37* (2), pp. 74–105
19. World Health Organization – WHO (2015). *World report on ageing and health. World Health Organization*. Downloaded 2021, June 25 from https://apps.who.int/iris/handle/10665/186463

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A LEGAL BASIS FOR OPERATION OF SECURITY SERVICES IN REPUBLIC OF SERBIA

ABSTRACT: During the past twenty years there was executed a thorough reorganization of the whole security in Republic of Serbia. Many strategic documents and regulations have been adopted, which have, in a transparent way, organized the national security system. Security services, as parts of the system, play a very important role in preserving the vital values of the state and society as a whole. Their role in protection of national interests has been defined through the adoption of certain legal acts. This paper, apart from the historic perspective, analyses the legal acts of a special importance for the reform of the security-intelligence system in Republic of Serbia.

Keywords: *national security, security services, intelligence activities, Republic of Serbia, reforms, legal control.*

1. Introduction

History of mankind has still not established the exact time of appearance of security services and intelligence activities, so that today, when trying to determine it approximately, we use numerous scientific and other assumptions. It is assumed that intelligence activities, i.e., security services, have appeared

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parallelly with human communities, while on the other hand, it is much easier to determine the time of the first institutional organization of these activities. It is believed that the first written evidence of intelligence activities derives from 2000B. C., and that it is a clay plate archeologists found in eastern Syria (Delić, 1996, p. 63; Stajić, 2021, p. 232; Savić, 2006, pp. 61–69; Keković, 2011).

The Bible states that Israelis massively used "intelligence officers" who, apart from information on opponents, produced significant material benefits. According to the Bible, Moses was assigned to send his people to investigate the Hanan country (Dragišić, 2011, p. 225).

Sun Cu, famous Chinese military leader and theoretician, several centuries B.C., in his book "The Art of War" talked about the significance of intelligence activities, and made a distinction among various types of spies and their use in military operations (p. 97).

During their historical development security-intelligence services went a long road from unorganized and occasional activities to organized and professional ones, i.e., from skill and shrewdnessto activities based on scientific knowledge and experience. In Italian cities/states Venice, Genova, Florence from the XV and XVI centuries intelligence services grew into separate state bodies. These are cities in which capitalistic socio-political and economic relations first began to develop. Apart from economic, political interests appeared, which forced these mini states to gain as best knowledge as they could of the situation in other states (Stajić & Lazić, 2015, pp. 351–353). Already in the VII and VIII centuries there were developed security services, which later, especially in the XX century, became a powerful weapon for collecting of information and knowledge, and for preventing of activities against interest of the state they work for.

2. Development of security services in Serbia

First written sources in the history of Serbs relating to intelligence and security activities derive from the time of the rule of Tzar Dusan. Thus,"Dusan`s Law"is considered the first legal act of historical value where we can find interpretation of intelligence activities. Tzar Dusan, relying mainly on Byzantine experiences, defined more than 70 professionsin the administrational structure of his rule, of which some were linked with performing of intelligence-security activities (Savić & Bajagić, 2005, p. 397; Lazić & Tomić, 2019, pp. 15–16).

Development of modern security and intelligence activities in the territory of Serbia started at the beginning of the XIX century, i.e., immediately

before and during the First Serbian Uprising. At the very beginning of the First Serbian Uprising in 1804, intelligence activities were primarily focused on the military-political segment. First examples of the so-called "double games", i.e., re-recruiting of Turkish agents, began then, as well as production of disinformation, all for the purpose of deceiving the Turkish population (Stojančević, 1964, pp. 9–10; Lazić & Tomić, 2019, pp. 20–23). At that time great importance was given to internal security of the uprising, where treason was punished most severely, as well as defeatismand espionage, which were treated as grave criminal offences (Perišić, 2002, p. 134; Lazić & Tomić, p. 21).

Prince Milos Obrenovic at the time of his first rule (1815–1839) paid great attention to organization of intelligence-security activities. Principal task of bodies in charge of realization of these activities was topreserve the rule of Prince Milos. At the time of his rule, intelligence-security bodies controlled all fields of social life, performed and dealt with all political and administrative activities, as well as the economic life of the country, and were also involved in foreign policy of Serbia. Collection and processing of confidential information were one of the most powerful weapons of Milos Obrenovic. These information were very important in negotiations which this Serbian Princeheld with the Port of Constantinople (Lazić, 2014, p. 45; Lazić & Tomić, 2019, pp. 24–26).

Military law which was adopted on November 12, 1839, was the first legal act which comprehensively defined the issues of security and counter-intelligence activities of the Army of the Principalityof Serbia.[1] Based on the Decree on General Staff Profession from March 5, 1884, Foreign (intelligence) sector was formed within the Operative Department of the General Staff.[2]

After adoption of the Law on Forming of the Sector for Confidential Police Activities, on October 17, 1899, this body was for the first time formed within the Ministry of Internal Affairs.[3] This made the basis for the new civil security service. Thus, activities of "confidential nature" were fully separated from other activities, and were placed within the competence of the Head of the Confidential Department, which was directly responsible to the Minister of Internal Affairs and the King.[4]

[1] From 2008, November 12 is celebrated as the Day of the Military-Security Agency (VBA).
[2] This date is celebrated as the Day of Military-Intelligence Agency (VOA).
[3] This date is celebrated as the Day of the Security-Information Agency (BIA).
[4] Jovan Milovanović was appointed Head of the Department for Confidential Police Activities.He was an experienced lawyer and creator of Serbian stenography.

Upon the end of the WW1 one of the first task of the bodies of the Kingdom of Serbs, Croats and Slovenians was establishing of an efficient intelligence-security system which could fight all internal and foreign threats. With the decree of the regent Alexander Karadjordjević from December 20, 1918, Ministerial Council (Government) was formed. Within the competence of the Ministry of Internal Affairs and the Ministry of Army and Navy were activities of national and military security. From 1920 activities of national security were passed over to the competence of the newly formed Department for National Protection, which was within the Ministry of Internal Affairs. This organization, with small changes, functioned until 1941.

During the WW2 development of intelligence-security structures of the Kingdom of Yugoslavia ran in very complex political-security circumstances. After capitulation of the Kingdom of Yugoslavia in April 1941, territory of the country was divided into German, Italian, Hungarian and Bulgarian occupation zones. Occupation forces established special police and intelligence-security services. Thus, we may talk about activities of German, Italian, Hungarian and Bulgarian military, police and intelligence-security services at the occupied territory.

Forming of new partisan authorities in liberated territories, in the form of people-liberation boards, began after the anti-fascist uprising. Within these administrative bodies, bodies were formed which were in charge of order and security in the liberated territories (Đorđević, 1979; Bajagić, 2010).

At the beginning of September 1943, Department for Protection of People was formed, whose principal job was to protect the liberated territory through counter-intelligence. From this Department on May 13, 1944, in Drvar, the Department for Protection of People (OZNA) was formed.[5] Thus, security-intelligence service was formed, established on military principles, with a uniform organizational structure and unique operation methods.

Upon the end of WW2, with adoption of the Constitution of the new Federative National Republic of Yugoslavia, conditions were created for organization of the whole state administration. From parts of OZNA, Radio Center and the Code Group, which were separated from the Ministry of National Defense, Directorate of State Security (UDBA) was formedin February 1946, as a centralized intelligence-security institution. Besides, *Counterintelligence service (KOS) was formed* from the III and IV parts of OZNA. *With the order from* 1955, KOS was reorganized and grew into the *Security Service* (SB) OF YNA (Yugoslav National Army).

[5] This date was celebrated as the Security Day until 2001.

With the Decision on forming of the Department for Protection of People, from May 13, 1944, security functions were definitely and officially separated from intelligence functions. General Staff of the Yugoslav Army had an Intelligence Department, which after the end of the war in 1947 grew into the Second Directorate, i.e., Intelligence Directorate of the YNA General Staff.

As a result of political changes that happened after the Brioni plenum in 1966, comprehensive reorganization was made and decentralization of UDBA into the National Security Service (SDB). After the Brioni plenum, after adoption of the Principal Law on Internal Affairs, at the beginning of 1967, a completely new service was created - State Security Service (Kovač, Dimitrijević & Popović Grigorov, 2015; Lazić, 2020a; pp. 78–8; Lazić, 2020b). After that, in the territory of the former Socialist Federative Republic of Yugoslavia there was a very complex security-intelligence system, comprised of various military and civil security services. Within the Federal Secretariat for Internal Affairs there was the National Security Service (SDB). Two military security services - Security Directorate and the Second (intelligence) Directorate of the YNA General Staff - were parts of the then Federal Secretariat for National Defense, while within the Federal Secretariat for Foreign Affairs there was the Service for Research and Documentation (SID), and from 1984 also the Service for Security Affairs (SPB). All six republics and two autonomous provinces, which were parts of the then state, had their republican and provincial state security services (Lazić, 2020a, pp. 78–79).

With the dissolution of SFRY, new states which appeared in that area formed their own security services. That was also the case with the Republic of Serbia. With forming of the joint state with Montenegro, under the name Federal Republic of Yugoslavia, in 1992, and the State Union of Serbia and Montenegro in 2002, both republics had their own security services (State Security Departmentin Serbia, and State Security Service in Montenegro). Within the Ministry of Defense and Army two military security services continued to function (security and intelligence). The same case was with the Ministry of Foreign Affairs, within which there were the Service for Research and Documentation and the Security Service (Lazić, 2020b, p. 19).

3. Regulation of security services in Serbia

After gaining of independence in 2006, Serbia started a comprehensive and total shaping of the security sector, and thus of security services, in accordance with its needs, i.e., challenges, risks and threats for security of the Republic of Serbia. This required passing of a new constitution (Constitution

of the Republic of Serbia, 2006), as well as other strategic and legal acts, which would in a comprehensive way complete the national security system.

Reform of the security-intelligence system of Serbia was dynamic, at least with regard to the legal framework. Thus, on July 2, 2002, the Security service Law of FRY was adopted, and then the Law on Security-Information Agency (BIA), and then National Assembly, on December 11, 2007, adopted the Law on the Bases for Regulation of Security Services of the Republic of Serbia. After total reorganization at the end of 2009, a set of strategic documents and laws was adopted, which regulate strategy, defense and security of the Republic of Serbia. Thus, the following were adopted: National Security Strategy, Defense Strategy, The Law on Military-Security Agency (VBA) and Military-Intelligence Agency (VOA), Data Secrecy Law and the Law on Civil Servants. Serbia has thus regulated and improved its national security system.

Scientific and professional public believe that security services, because of their traditional restricted nature, are opposed to changes and very often hinderreforms and reorganizations. We should know that it is in the interest of the country and the whole society, as well as the sector of security services, for the security-intelligence system to be legally regulated. This implies adoption of new legal regulations and amendments of the existing ones. If within the framework of all adopted legal acts competencies and responsibilities of each service are defined, if it is clearly defined who controls their work, who are they responsible to, possibilities for abuse are significantly reduced.

During the last two decades great efforts have been made in the Republic of Serbia for adoption of legal acts which clearly and precisely regulate the work of the whole security system, including, as a special segment, the work of security services.

3.1. Security-Information Agency (BIA) – new security service of Serbia

National Assembly of the Republic of Serbia adopted on July 19, 2002, the Law on Security-Information Agency. This law separates the Department of National Security from the Ministry of Internal Affairs, and transforms it into a security organization responsible to the Government of Serbia. This new service is in the system of state administration regulated as a "special organization", of "mixed type", which simultaneously performs intelligence and counter-intelligence activities. Special organization is formed for professional and executive activities linked with them, whose nature requires larger independence from the one that a dependent body has (Kulić, 2017, p. 58). However, adoption of this law met with certain public criticism.

The Law has 28 articles, which do not regulate this matter in a precise and complete manner. For this reason, it was necessary to adopt a large number of by-laws, to define this matter in the appropriate way. The said law regulated only generally which special procedures and measures this security service could apply against individuals, groups of individuals, or organizations. This law used the expression "that against certain physical and legal entities certain measures are to be undertaken, which do not respect the principle of inviolabilityof secrecy of letters and other communication means". However, the law does not define which measures, in which manner, and through which means could be undertaken. For this reason, "provisions of Article 13 of the Law Security-Information Agency (BIA), as well as Articles 14 and 15, which are in direct connection with the former, were declared unconstitutional by the Constitutional Court of Serbia on December 26, 2013. The Court set the deadline of six months for them to be regulated in accordance with the Constitution of the Republic of Serbia" (Lazić, 2014, pp. 185–186).

Explanation of this decision of the Constitutional Court says: "Constitutional Court has assessed that the disputed provision of Article 13 of the Law, which regulates deviation from the principle of inviolability of secrecy of letters and other communication means, was not formulated clearly and precisely. Regardless of the fact that Security-Information Agency performs activities involving a high degree of secrecy, Constitutional Court believes that provisions of the Law which regulate the manner of performing of the Agency`s activities must be predictable to the degree which is reasonable in given circumstances. The provision of the disputed Article 13 of the Law which defines individuals to whom constitutionally guaranteed rights are restricted, and measures through which this is done, is not precise, or defined, or definable. Because of this it is very difficult for citizens and legal entities to find out what is the legal regulation which shall be implemented in given circumstances, and this deprives them of the possibility to protect themselves from the unacceptable restriction of rights, or from arbitrary interference into the right on respect of privacy and correspondence. The Court assessed that the disputed provisions of articles 14 and 15 of the Law are not in accordance with the Constitution, because they are in legal and logical connection with provisions of article 13 of the Law, which were previously assessed as unconstitutional".

Based on the Decision of the Constitutional Court, National Assembly of the Republic of Serbia adopted on June 28, 2014, Amendments and Supplements to the Law on Security-Information Agency, relating to deviation from "inviolabilityof secrecy of letters and other means of communication" (Lazić, 2015, p. 170).

Amendments of the said provisions of the Law on Security-Information Agency have certainly increased the role of court instances in control of implementation of certain measures which directly violate the right on "inviolabilityof letters and other means of communication" of citizens. Deviation is allowed only for a certain period of time, based on decisions of court instances. In order for a measure to be able to be implemented, as said the in the Constitution, it has to be defined by the law. This law provides a precise definition of the competence of the Special Department of the Higher Court in Belgrade, which decides on implementation of measures, taking care of guaranteed human rights and freedoms (Lazić, 2015, p. 171).

Last amendments and supplements to the Law on Security-Information Agency were adopted by the National Assembly of the Republic of Serbia on May 9, 2018. They regulate that the act on systematization and regulation of positions is to be defined by the Director of the Security-Information Agency, with previous agreement of the Government. This act defines organizational units, jobs performed by these units, manner of managing, competencies and responsibilities of managers, internal control and internal audit. Also, the amendments regulate that information contained in the act are secret, and are to be handled in accordance with the law which regulates secrecy of information.

Hiring of employees for the Security-Information Agency does not require public advertisements, itsdirector makes decisions on hiring of employees. Besides, the amendments define professional training of employees, as well as taking of professional exams. The explanation states that amendments and supplements are adopted for the purpose of preservation of the existing employment-legal status of employees, and harmonization with adopted new laws on the police and the salary system of the public sector employees.

3.2. Bases of regulation of security services of Serbia

Based on the Law on Bases of Regulation of Security Services of the Republic of Serbia from December 2007, security-intelligence system of Serbia has been defined and completed. This law regulates existence of three security services, one civil and two military: Security-Information Agency (BIA), Military-Security Agency (VBA), and Military-Intelligence Agency (VOA). All three agencies are separate legal entities and have separate budgets. By adoption of this law two previous security services ceased to exist within the Ministry of Foreign Affairs (Service for Research and Documentation – SID), and Security Service (SB). Besides, the Law regulates the position and manner of functioning of the National Security Council, Parliamentary

Security Services Control Committee, and competencies of the Parliamentary Security Services Control Committee in control of the security sector.

National Security Council, as executive authority body which directs and coordinates the work of the complete security sector, has nine members: 1) President of the Republic, 2) Prime Minister, 3) Defense Minister, 4) Minister of Internal Affairs, 5) Minister of Justice, 6) Head of General Staff of Serbian Army, 7) Director of Security-Information Agency, 8) Director of Military-Security Agency, and 9) Director of Military-Intelligence Agency.

Meetings of the National Security Council are presided by the President of the Republic, and if he is absent, he is replaced by the Prime Minister. Agendas of the meetings are before summoning for meetings agreed upon by the President of the Republic and the Prime Minister. All legal acts deriving from the work of this body are signed solely by the President of the Republic. As needed, other high governmental functionaries may be summoned to the meetings of this body.

The Bureau for Coordination of Security Services is a completely new body of the security-intelligence system. Its members are directors of security services and the Council`s secretary. This is an operative and professional body whose task is to harmonize the work of the three security services, to form operative-work groups and execute decisions of the Council.

Secretary of the National Security Council is appointed by the President of the Republic and he is obliged to take care of execution of conclusions and other legal acts adopted by this body. Office of the National Security Council is a professional body of the Council appointed by the Government of Serbia at the end of 2009, and has the obligation to handlethe work of that body. By adoption of the Data Secrecy Law it was also given competencies relating to protection and keeping of secret information, as well as certification of individuals who would have access to information of various levels of secrecy.

3.3. Legal foundation of military security services

At the end of October 2009, the Law on Military-Security Agency and Military-Intelligence Agency was adopted. This law shaped the security-information system of the Republic of Serbia.

The said laws defined the organizational structure of military security services. It removed the dilemma and defined that there were still two military agencies: Military-Security Agency (VBA), which is competent for activities of counter-intelligence and security protection of the Ministry of Defense and Serbian Army, and Military-Intelligence Agency (VOA), competent for intelligence activities and activities of significance for the defense system.

Thus, the idea was abandoned on uniting of functions of VBA and VOA, and on forming of one agency, which had been announced in the previous period and in certain documents (Strategic Review of Defense from 2009).

Apart from competencies, the Law defines that directors of military security services (VBA and VOA) and their deputies are appointed and removed by the President of the Republic, upon proposal of the Minister of Defense, if they are in military, while if they are civils this is done by the Government, upon proposal of the Defense Minister. Before their appointment it is necessary to obtain the opinion of the National Security Council.

The Law on VBA and VOA contains a more detailed regulation of work of both agencies, which, after the decision of the Constitutional Court, at the beginning of June 2012, were revised with regard to competences of BA.[6] The important novelty in this law is introducing of the General Inspector as a type of internal independent control, with defined competencies in this process.

3.4. Democratic and civil control and transparency in work

There has always been an interest to establish efficient mechanisms of control and supervision, in order for security services to act in accordance with the competencies defined by the Constitution, laws and other regulations. If not, we would have abuses of competences, which are certain to lead to violation of human rights and freedoms. In democratic societies, security services should strive to efficiency, political neutrality, commitment to professional ethics, and openness to democratic civil control (Stajić, 2012, pp. 133–134).

Finally, with adoption of the Law on Bases for Regulation of Security Services of the Republic of Serbia at the end of 2007, and forming of the Board for Control of Security Services in 2012, parliamentary control and supervision of security services were regulated, as well as the position and role of the National Security Council. Article 3 of this law regulates that the services, apart from being under democratic civil control of the National Assembly of Serbia, are also controlled by the President of the Republic, the Government, other state bodies and the public.

One of the goals of the reformation process is achieving of a certain degree of transparency of work of security services. Although secrecy is one

[6] This relates to implementation of electronic surveillance of telecommunication and information systems for the purpose of collecting of information on telecommunication traffic, with no insight of their content.With the amendments of the Law on VBA and VOA, implementation of this measure is to be approved by the Higher court.

of the main principles of the services` work, since they deal with security of the democratic establishment, where transparency of work of state institutions is the main formal principle, security services are expected to be more transparent. However, it is not easy to determine the real measure of transparency and secrecy. Each country determines the relationship between these two principles depending on security risks, challenges, and threats. This issue is regulated in accordance with the Law on Free Access to Information of Public Importance and the Data Secrecy Law. Implementation of these laws met with certain problems, which were overcame later on.

Based on the Law on Free Access to Information of Public Importance, the procedure was defined for access to information in possession of governmental bodies. Practically, this law introduced into the legal order of the Republic of Serbia the Ombudsman for access to information of public importance, as an independent governmental institution. By adoption of the Data Secrecy Law in 2008, competencies of the Ombudsman were extended to this field, too. Based on the Law on Free Access to Information of Public Importance, security services are obliged to inform the public on their work through their web sites updated twice a year. Besides, they have a person responsible for communication with the public and answering of submitted requirements relating to access to required information.

The important step in completing of legal normatives is adoption of the Law on secrecy of information in December 2009. This defined clearly and precisely certain levels of secrecy of documents, the procedure for their classification, issuing of certificates for access to such information, and penalties for their disclosing. Government of the Republic of Serbia has adopted a certain number of by-laws relating to implementation of this law in practice.

Transparency of budgets of security services is a very delicate issue in all countries, especially concerning concrete structures of funds and their spending for certain purposes. In most cases this segment is rather secret. Many security services, especially those most powerful ones, do not want to have their allocated budgets be available to the public. On the other hand, tax payers have the right to know in which way and for what purposes are budgets for this segment spent as well. Total budget amounts for certain services is available to the public through the Law on Budget which is adopted by the National Assembly at the end of each year.Budget allocated for the civil security service (BIA), is transparent with regard to its total amount, while budgets for the two military security services (VBA and VOA) is not transparent – they are classified as “top secret“ and are a part of the budget allocated to the defense sector.

4. Conclusion

All contemporary democratic societies regulate their security systems for the purpose of realizing of the protective function and establishing of the state of security in the manner and volume corresponding to their needs, interest and possibilities. Principal goal of the national security system is protection of vital values of the society, in order to ensure unhindered development and prosperity. Securiuty of the country and the society as a whole means absence of threats to adopted values in an objective sense, while subjectively it implies absence of fear from having these values attacked. Full security is impossible to achieve, because threats occu all the time at all levels, but it is possible to mitigate them, and that is the principal task of the whole system of national security. Special attention is to be paid to subjective security, which implies creation of the sense of security in citizens.

In order to realize this, it is necessary to constantly improve institutions of importance for security of citizens, the country, and the society as a whole. This implies primarily the police, the military, and security services.

Legal bases for regulation and organization of work of the security-intelligence system of the Republic of Serbia are in process of completing. Contemporary threats to security of the country and the society as a whole require the complete security sector to adjust to new situations. In such circumstances the role of security services is especially important, because their activities playan expressed pre-preventive and preventive role, and include observing certain phenomena much earlier and preventing them in time.

For these reasons, legal-normative bases for the work of this extremely important segment of state administration are even more important, if we know how great is the social importance of the security services establishment in all countries. Besides, we should especially take into consideration the geostrategic position of Serbia and the importance of this area in the Balkans, as the hub of significant international roads, territorial surroundings, and especially unsolved relations and security contradictions among countries which appeared in the territory of the former Socialist Federative Republic of Yugoslavia.

Legal regulations, as well as implemented reforms in the work of security services are of extreme importance for functioning of the Republic of Serbia. The reasons for such a state in the country are not at all simple, since the problems we are facing today derive as back as the 90s of the XX century. Crises and wars in the area of the former SFRY in a large degree had a negative

impact on the survival and development of our country. Apart from numerous harmful impacts, they have destroyed the social system and relations within it, and thus the living standard of citizens was affected.

Since we are in the process of European integration and negotiations on membership with the European Union, we are imposed, beside other things, with numerous standards which we must satisfy through comprehensive reforms. In this procedure one of the requirements relates toadoption of legal acts which would define the security-information system of Serbia, as well as establishing of mechanisms of democratic and civil control over them. In order for all this to come to life in practice, it is necessary to adopt certain legal regulations. Up till now a lot has been done, but many fields have still remained which need to be successfully finalized in order for Serbia to come closer to the EU membership, which is the end goal of the Republic of Serbia.

The process of legislative regulation, not only for the security sector, has not been completed, and is to be continued. It has a crucial importance for development of a stable democracy, market economy and political and social structures, which depict the values and needs of the country and the society as a whole.

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PRAVNI OSNOV ZA RAD SLUŽBI BEZBEDNOSTI U REPUBLICI SRBIJI

REZIME: U proteklih dvadesetak godina u Republici Srbiji izvršena je temeljna reorganizacija kompletnog sektora bezbednosti. Usvojeni su mnogi strateški dokumenti i zakoni koji su na transparentan način ustrojili sistem nacionalne bezbednosti. Službe bezbednosti kao deo tog sistema imaju izuzetno važnu ulogu u očuvanju vitalnih vrednosti države i društva u celini. Donošenjem određenih pravnih akata definisana je njihova uloga u zaštiti nacionalnih interesa. U ovom radu, pored istorijske retrospektive,

analiziraće se najvažnija pravna akta koja su bila od naročite važnosti u reformi bezbednosno-obaveštajnog sistema u Republici Srbiji.

Ključne reči: *nacionalna bezbednost, službe bezbednosti, obaveštajna delatnost, Republika Srbija, reforme, pravni osnov, kontrola.*

References

1. Bajagić, M. (2010). Špijunaža u 21 veku – savremeni obaveštajno-bezbednosni sistemi [*Espionage in the XXI Century – Contemporary Intelligence-Security Systems*]. Beograd: MARSO
2. Delić, M. (1996). *Obaveštajna delatnost* [*Intelligence activities*]. Beograd: MUP Republike Srbije
3. Dragišić, Z. (2011). *Sistem nacionalne bezbednosti Republike Srbije* [*National Security System of the Republic of Serbia*]. Beograd: Fakultet bezbednosti
4. Đorđević, O. (1979). *Zaštita revolucije* [*Protection of the Revolution*]. Beograd: Institut za političke studije
5. Keković, Z. (2011). *Sistemi bezbednosti* [*Security Systems*]. Beograd: Fakultet bezbednosti
6. Kovač, S., Dimitrijević, B. & Popović Grigorov, I. (2015). *Slučaj Ranković – iz arhive KOS-a* [*The Ranković Case - from archives of KOS*]. Beograd: Medija centar Odbrana
7. Kulić, M. (2017). *Upravno pravo: opšti deo* [*Administrative Law – general part*]. Novi Sad: Pravni fakultet za privredu i pravosuđe
8. Lazić, R. (2014). *Kontrola službi bezbednosti u Srbiji* [*Control of security services in Serbia*]. Beograd: Akademija za nacionalnu bezbednost, JP Službeni glasnik
9. Lazić, R. (2015). Sudska kontrola zakonitosti u radu službi bezbednosti u Srbiji [Court Control of Legality of Work of Security Services of Serbia]. *Zbornik radova Pravnog fakulteta u Novom Sadu*, *49* (1), pp. 157–178
10. Lazić, R. (2020a). Kontrola službi državne bezbednosti od sredine 1966. do početka 1975. godine [Control of security services from mid-1966 till the beginning of 1975]. *Pravo – teorija i praksa*, *37* (2), pp. 77–94
11. Lazić, R. (2020b). *Službe bezbednosti Jugoslavije – od Brionskog plenuma do raspada države, knjiga prva* [*Security Services of Yugoslavia – from the Brioni Plenum till the Dissolution of the Country, volume one*]. Beograd: IP Neven

12. Lazić, R. & Tomić, M. (2019). *Civilna služba bezbednosti u Srbiji* [*Civil Security Service in Serbia*]. Beograd: JP Službeni glasnik
13. Perišić, M. (2002). *Ministarstvo i ministri policije u Srbiji 1811–2001* [*The Ministry and Minister of Police of Serbia 1811–2001*]. Beograd: Ministarstvo unutrašnjih poslova
14. Savić, A. (2006). *Obaveštajne službe i nacionalna bezbednost* [*Intelligence Service and National Security*]. Kragujevac: Pravni fakultet
15. Savić, A. & Bajagić, M. (2005). *Bezbednost sveta – od tajnosti od javnosti* [*World Security – From Secrecy to Transparency*]. Beograd: Viša škola unutrašnjih poslova
16. Stajić, Lj. (2012). *Kontrola policije i službi bezbednosti* [*Control of Police and Security Services*]. Novi Sad: Pravni fakultet
17. Stajić, Lj. (2021). *Osnovi sistema bezbednosti – sa osnovama istraživanja bezbednosnih pojava* [*Bases of the Security System – with the bases of research of security phenomena*]. Novi Sad: Pravni fakultet
18. Stajić, Lj. & Lazić, R. (2015). *Uvod u nacionalnu bezbednost* [*Introduction into national Security*]. Beograd: Akademija za nacionalnu bezbednost, JP Službeni glasnik
19. Stojančević, V. (1964). *Obaveštajna služba u Karađorđevoj i Miloševoj Srbiji (istorijska građa), knjiga III* [*Intelligence service in Serbia at the time of Karadjordje and Milos (historical documents), volume III*]. Beograd: DSNO, Uprava bezbednosti
20. Cu, S. (2014). *Umeće ratovanja* [*The Art of War*]. Beograd: Babun
21. Ustav Republike Srbije [Constitution of the Republic of Serbia]. *Službeni glasnik RS*, no. 98/06
22. Zakon o bezbednosno-informativnoj agenciji [The Law on Security-Information Agency]. *Službeni glasnik RS*, br. 42/02, 111/09, 65/14 – Odluka US, 66/14 i 38/18
23. Zakon o Vojnobezbednosnoj i Vojnoobaveštajnoj agenciji [The Law on Military-Security Agency and the Military-Intelligence Agency]. *Službeni glasnik RS*, br. 88/09, 55/12 – Odluka US i 17/13
24. Zakon o tajnosti podataka [The Law on Secrecy of Information]. *Službeni glasnik RS,* br. 104/09
25. Zakon o slobodnom pristupu informacijama od javnog značaja [The Law on Free Access to Information of Public Importance]. *Službeni glasnik RS*, br. 120/04, 54/07, 104/09 i 36/10
26. Zakon o zaštiti podataka o ličnosti [The Law on Protection of Personal Information]. *Službeni glasnik RS*, br. 87/18

27. Zakon o civilnoj službi [The Law on Civil Service]. *Službeni glasnik RS*, br. 88/09
28. Zakon o osnovama uređenja službi bezbednosti Republike Srbije [The Law on Bases of Regulation of Security Services of the Republic of Serbia]. *Službeni glasnik RS*, br. 116/07 i 72/12
29. Strategija nacionalne bezbednosti [National Security Strategy]. *Službeni glasnik RS*, br. 88/09 i 94/19
30. Strategija odbrane [Defense Strategy]. *Službeni glasnik RS*, br. 88/09 i 94/19

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THE "BELT AND ROAD" INITIATIVE FROM THE ASPECT OF THE NEW GEOSTRATEGY AND THE IMPACT ON THE SAFETY FACTORS IN ROAD TRAFFIC

ABSTRACT: The paper presents one of the activities at the global level and, there is partially analysed its impact on safety factors in the transport of passengers and goods, as well as in the provision of services in this area at the moment. The issue of road safety cannot be viewed isolated from the rapid economic and social development. Significant efforts have been made to improve safety factors, in particular the construction of the road infrastructure. Having all that in mind, it was necessary to pass appropriate regulations, which seems to be done through the adoption of legislation, the implementation of education, the adoption of the standards for vehicle safety, as well as through a technological development.

Keywords: *road safety, geostrategy, the "Belt and road" initiative.*

1. Introduction

We live in a world of uncontrolled globalization and neoliberalism, "through which political, social and economic areas are not governed by more states, but by the owners of big capital. In such a world, geopolitical goals are not achieved primarily in armed conflicts, but money is the key factor

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for territorial conquests, which is no longer in the possession of the state, but in the possession of individuals or groups of people. In these geopolitical processes, there was a multipolarization of the world, in which we can talk about three dominant world powers, namely: the United States, Russia and China, while the European Union is sandwiched between their interests. There are different ways of achieving geopolitical goals, and some authors believe that the project "Belt and Road" is one of them" (Grahovac, 2017, pp. 30, 39,174, 176).

2. The impact of China's social and economic development

China's rapid economic and social development, which began at the end of the last century, gained its new dimension in 2013. Given the already existing global problem with infrastructure in trade, China positioned itself globally, providing a solution to this problem through the idea of a new Silk Road, i.e. the "One Belt, One Road" Initiative, later reformulated into "Belt and Road". This initiative will connect Asia, Africa, Europe and South America through the economy and trade, investment, infrastructure, capital and people. It is a Chinese strategic project, which will transform the constellation in the global economy, with China as a key player. The project is designed to be open to all countries, as well as to all public and private companies. Connection is planned through rail, road, sea and air transport and infrastructure development, which includes digital infrastructure. Initially, the project included 64 economies, but over time it has expanded to more than 170 countries that are involved in various ways in the project. Through a combination of six corridors, China plans cooperation and investment in a large number of countries and promotes the connection of infrastructure and economy (Brakman, Frankopan, Harry & Van Marrewijk, 2019, pp. 3–16). The six main economic corridors within this project are China and: "Mongolia and Russia, Eurasian countries, Central and Western Asia, Pakistan, other countries of the Indian subcontinent and Indochina." The initiative has a positive impact on the countries involved in the project, especially due to Chinese investments and infrastructure construction. On the other hand, China will be able to develop the market for its products and relocate its industry, which is its biggest polluter (China's Belt and Road Initiative in the Global Trade, Investment and Finance Landscape, 2018, p. 3).

3. "Belt and Road" as a driver of economic cooperation

"Belt and Road" does not represent the beginning of economic cooperation between China and the European Union, on the contrary, it represents the continuity of these relations, which began in 1975, to be characterized in 2003 as a "strategic partnership" and in 2007 as a comprehensive strategic partnership". From a country that was almost in last place as a foreign trade partner of the European Union, in 2014, China emerged as one of the leading countries in terms of imports into the European Union. For the implementation of Juncker's plan from 2015 for the development of European infrastructure, i.e. investments, China gave its consent and presented financial support for its realization. China's accession to the European Bank for Reconstruction and Development implies joint financial projects with European Union countries. The interest is not one-sided, but leading European countries, such as Germany, France, Italy and Great Britain, are showing their initiative for joint financing of infrastructure projects through inclusion in the Asian Infrastructure Investment Bank (Obradović, 2021, p. 163).

4. The impact of the Belt and Road on the Balkan states

The Belt and Road initiative includes Balkan countries, including Serbia. The process of cooperation between 16 + 1, i.e. cooperation between China and 16 countries in Eastern and Central Europe, began somewhat earlier, with the tendency of Eurasian connection through the most important transport corridors and projects. These countries are included in the western direction of the Belt and Road Initiative, as a significant part of the global Chinese project. Serbia is among them, with the fact that there has been a strategic partnership between China and Serbia since 2009. Through a number of bilateral agreements, China has negotiated with the Balkan states the construction of highways, such as the Belgrade-South Adriatic maritime highway with Serbia, then Macedonia's Albania-linked highway, as well as road links of directions of the Baltic, Adriatic and Black Seas and the port of Piraeus, through Macedonia, Serbia and further north. In the context of the Belt and Road Initiative, the challenge for the countries of Southeast Europe is to set general goals and harmonize them with the Chinese economic concept, then to include the possibilities offered by the Initiative in national strategies and plans, especially as it means that national policies of states from this region will be harmonized. At the same time, the European path of the countries of Southeast Europe is not compromised by taking part in the Initiative, since

many countries of the European Union are involved. It is especially useful that this will improve the position of the countries from this region in the geoeconomic sense, primarily in terms of gaining importance in transport, especially in Turkey, Greece and Serbia (Obradović, 2021, pp. 166–169).

5. "Belt and road" as a standard

China has adopted an Action Plan for connecting the "Belt and Road" standards for the period 2015-2017, which must be international, in order to facilitate connection, trade and cooperation between many countries and different systems on the Asian, African and European continents. Without standardization, it is almost impossible for the governments of these countries to pursue policies and formulate plans at the macro level in terms of technologies, products and services. Therefore, it is important to systematize and accelerate mutual recognition of standards, especially in steel, non-ferrous metals, railways, highways, engineering for transport of water, oil, natural gas, especially in new industries such as intelligent transport, biology, new energy, new materials and similarly. The action plan mentions standardization in terms of road construction (标准联通,一带一路'行动计划 Standard Unicom Belt and Road Action Plan, 2021).

We mentioned that there are major shortcomings in world trade due to infrastructure. The world's biggest investment needs are in road transport and energy infrastructure. It is projected that global investments in this sector, specifically in connecting transport, will be lacking in the coming decades by 0.4 trillion US dollars a year. The planned Chinese investments in foreign infrastructure within the Belt and Road Initiative for the period 2017-2027 amount to as much as one trillion US dollars. Only on the basis of this data can one get an impression of the significance of the entire project at the global level (China's Belt and Road Initiative in the Global Trade, Investment and Finance Landscape, pp. 3–6). The main goals, defined in the 13th Five-Year Plan from 2016, include the improvement of bilateral and multilateral cooperation in trade and investment, the establishment of a network of high standard free trade zones along the road, strengthening financial cooperation to finance infrastructure, access to natural resources and international cooperation, energy and in the production chain, but also the deepening of cultural cooperation (China's Belt and Road Initiative in the Global Trade, Investment and Finance Landscape, pp. 6–10).

Special emphasis within the project is placed on strengthening the multimodal transport infrastructure through highways, i.e. the so-called express

roads, railways and connecting seaports. Certain projects include the construction of subways, for example in Vietnam, Russia and Nigeria, while in Pakistan, Sri Lanka, Georgia, Croatia, Serbia and Montenegro, highways are being built (Wang, 2020, p. 8). In this regard, the goal of sustainable development by 2030 is related to ecology and environmental protection through the revolution in energy technologies, as well as maintenance and construction of infrastructure while respecting all environmental standards, through so-called green transport, green buildings and green energy. The standards, which China wants to apply globally, also apply to the digital aspect of the Initiative. The 5G network is a major player in new technologies and major trends, such as the management of automatic vehicles, drones, smart cities (China's Belt and Road Initiative in the Global Trade, Investment and Finance Landscape, pp. 15–27).

6. Impact of the Belt and Road Initiative on global gross domestic product and further development of transport at the global level

The impact of the Belt and Road Initiative on global gross domestic product, according to some research, will increase by 1.3% by 2030, while global trade is expected to increase by 5%. It is predicted that most of the profits will go to the countries included in the "Belt and Road". It is assumed that, as a consequence of the implementation of this project, the margins of road transport will be reduced by 25%, and the total exports from this group of countries will increase by 5 to as much as 135 billion dollars. The reduction in domestic trade costs in the countries of the Initiative is 10.2%. By comparison, this amount in non-Initiative countries is 5.9% (Maliszewska & Mensbrugghe, 2019, pp. 4–9).

The construction of the corridor within the Belt and Road Initiative aims not only to increase the volume of trade and to integrate the countries in the regions of these corridors, but also to reduce the speed of transport. Namely, the transit time on the corridors is expected to be shortened by 12%, and only one day less in transit increases trade by 5.2%. Reduced transport time is especially important for the trade in fresh fruits and vegetables. This progress will not only have a positive impact on the countries along the corridor, but also on all other countries, including those that are not part of the Initiative, where transport times will be reduced by 3% and trade will increase by an average of about 3%. In addition, all countries will feel the reduced price of trade. However, if accompanying reforms are lacking in certain countries along the corridor, such as establishing free trade and shortening the length of

retention of goods at borders, the amount of investment in infrastructure may outweigh the benefits (Raiser & Ruta, 2019).

Investing billions of dollars in the countries involved in the "Belt and Road" project will lead to increased economic activity, which will, in turn, significantly improve urban transport through electrification, automation and digitalization. The use of artificial intelligence will enable optimal traffic management and more efficient use of roads. This enables digital connectivity between people, goods, vehicles and infrastructure, and will be able to point out road hazards to each other, collect important transport data and analyze it to better organize mobility, for example, to change direction for better traffic, better reaction due to weather conditions and the like. However, this development may have negative consequences for the environment due to increased emissions. Therefore, special emphasis is placed on so-called green transport. Namely, by 2033, it is expected that the concept of sustainable urban transport will be applied in the cities along the "Belt and Road". This would include public transport with fast electric buses and adapted infrastructure, while infrastructure adapted to private cars is kept to a minimum. The infrastructure for non-motorized transport would be greatly expanded. The transport of goods will be done by electric and automated vehicles, with the use of smart technologies that increase the efficiency of the infrastructure. As a result, reduced carbon emissions, more efficient transport and industrial expansion of countries along the Belt and Road and green technologies are achieved (Wang, 2020, pp. 10–18).

7. Comparative legal analysis regarding safety factors and their role in road transport contracts

Of great importance for the safety of road traffic, and therefore for more efficient, flexible and reliable provision of transport services, is the standardization of safety. In 2009, the World Health Organization published the Report on Global Road Safety, based on data submitted by 178 countries. So, only 11 years ago, it was determined that the legislation that regulates risk factors for traffic safety in more than two thirds of countries is incomplete, and that in those countries where legislation exists, it is not implemented properly. The report, which followed five years later, did not show better results in a number of countries, although in the meantime, in 2010 and 2012, the United Nations General Assembly adopted two resolutions 64/255 (5) and 66/260 (6), calling for states to enact comprehensive legislation on key risk factors in road traffic, as well as to improve its implementation (World Health

Organization: Strengthening road safety legislation: a practice and resource manual for countries, 2013, p. 1).

The question is what are the factors due to which there are such drastic differences between countries in the world in terms of legislative measures, which regulate the field of traffic safety. In addition to the undeniable impact of traffic accident mortality statistics, political will plays an important role, especially for legislative reforms, public pressure, as well as social norms and values. By regulating acceptable behavior in traffic, such as the obligation to fasten seat belts or the prohibition of drunk driving, legal norms can influence and change people's behavior.

We will present certain national legal systems and the way in which the factors of road traffic safety are regulated in them, from the aspect of man, vehicle and road.

7.1. Serbia

The place and role of the traffic safety system in the Republic of Serbia are regulated by the Constitution, then by recognized international sources, laws and bylaws. The laws that primarily regulate the traffic safety system are: Law on bases of traffic safety on roads (2009), Law on road traffic safety (2009) and Law on public roads (2005).

The Law on Bases of Traffic Safety on Roads (2009) contains provisions relating to drivers and vehicles, as well as the part relating to roads. In addition, the Law on Traffic Safety regulates rights and obligations, regulates traffic, as well as all other provisions important for traffic safety.

The main task of the Law on Road Safety, as well as its implementation is to achieve a high level of road safety through: monitoring changes in the behaviour of traffic participants through building awareness, knowledge, attitudes and skills through adequate education and information; application of adequate control measures and sanctioning measures in case of violation of traffic safety measures; if necessary, removal (temporarily or permanently) of traffic participants who do not meet the requirements for safety of traffic participation.

7.2. Croatia

The most important legal act that regulates the issue of road traffic safety is the Law on Road Traffic Safety. The law was passed in 2008, but had several amendments, with the last one adopted in 2020 (The Road Traffic Safety Act, 2008).

Driver: The priority of the Croatian National Program, which concerns drivers as a factor in road safety, refers to improving their behaviour in terms of speeding, driving under the influence of alcohol or drugs, better education, aggressive driving and the like.

Vehicle: Compulsory technical inspection issues are similarly regulated in Croatia and other EU countries.

Road: Permitted speed on urban roads in Croatia is up to 50 km / h, on rural roads is up to 90 km / h, while the speed of motor vehicles on the highway is limited to 130 km / h (Article 54 of the Law).

7.3. Montenegro

The Law on Road Safety of 2012 adopted the measures planned by the Strategy (Law on Road Safety of Montenegro, 2021).

Driver: The Law on Road Traffic Safety in Montenegro regulates the issue of drivers as a safety factor, prescribing conditions for driving a vehicle, age conditions for obtaining a driver's license, health ability to drive a vehicle, as well as restricting the right to drive a motor vehicle.

Vehicle: All technical standards that a vehicle must meet in Montenegro are prescribed by law (Article 242 of the Law).

Road: Roads in Montenegro are mostly regional, followed by highways, and the rest of the roads are local. The legal limit for the maximum speed in a populated area is 50 km / h. Outside the settlement, the Montenegrin legislator distinguishes the speed of movement on the highway (there is still no highway in Montenegro), which limit is 130 km / h, except for buses with a limit of 100 km / h, then on the highway, 100 km / h, on other roads this limit is up to 80 km / h.

7.4. Bosnia and Herzegovina

The issue of road traffic safety in BiH is regulated at the state and entity levels, which recognize the importance of safety factors for drivers, vehicles and roads, as well as their interaction. These factors of road traffic safety are regulated in more detail by the Law on Fundamentals of Road Safety in BiH (Law on Basic Safety of Road Traffic in BiH, 2006).

Driver: Drivers are obliged to respect the speed limit for motor vehicles on urban roads up to 50 km / h, on rural roads up to 80 km / h, while the speed limit on the highway in BiH is up to 130 km / h (Article 44 of the Law).

Vehicle: The European Commission has stated that the technical inspection and control of vehicles in BiH is regulated by the above-mentioned Law, which is partially harmonized with Community law, but that there is no effective application of its provisions in the entities. Restrictions on the weight and dimensions of road vehicles, which are enforced throughout the country, are also harmonized with EU law (Commission Staff Working Document, 2019, p. 119).

Road: The European Commission stated in a report from 2020 that the legislation of BiH on the issue of road quality testing is in order. The provisions of the Law, which regulate the restrictions on the maximum weight and dimensions of vehicles, are in line with EU law.

7.5. Germany

Germany's last program on traffic safety was made in 2011 for the period until 2020. The primary goal was to reduce traffic fatalities by 40% by 2020. With this goal in mind, the plan addressed the improvement of road infrastructure safety, the introduction of automatic driving and vehicle safety systems on the market, as well as the field of human impact on road safety (OECD, International Transport Forum: Road Safety Annual Report Germany, 2019, p. 2).

Driver: The legal obligation of the driver is to drive the vehicle exclusively at a speed that allows him constant control over the vehicle.

Vehicle: The German highway is reserved only for motor vehicles, which can move at speeds higher than 60 km / h (Section 18 of the Road Traffic Act).

Road: The driving speed is prescribed according to the type of road to which it refers. Thus, the speed limit for passenger vehicles on German rural roads is up to 100 km / h, in populated areas 50 km / h, while for motorways, speeds of up to 130 km / h are recommended. Therefore, there is no prescribed speed limit on the highway (Section 3 of the Road Traffic Act).

7.6. Russia

Given the size of the country, the Russian Federation has one of the largest transportation networks. Therefore, the number of traffic accidents on the roads is large. However, the percentage in which drivers caused traffic accidents is as much as 85%, of which 7.8% of cases are responsible for increased blood alcohol concentration (Ichkitidze, Sarygulov & Ungvari, 2017, pp. 242–246).

Driver: The speed of the vehicle on the roads must be within the allowed limits, but it must also adapt to the conditions of traffic intensity at that time, the characteristics and condition of the vehicle itself, weather conditions and visibility on the road. The prescribed driving speed depends on whether it is an inhabited place or a road outside the settlement.

Vehicle: The engine of the vehicle must be such that the content of harmful substances in exhaust gases and their smoke do not exceed the values specified in GOST R 52033-2003 and GOST R 52160-2003, while the permissible level of external noise does not exceed the values specified in GOST R 52231-2004 (Article 1, 3, 10 and 11 of the Basic Provisions, as well as the Addendum to the Basic Provisions).

Road: Road traffic safety in Russia, which refers to the road as its factor, has been regulated since 1993 through the State Standard for Roads and Streets and the conditions of their maintenance to ensure traffic safety (GOST R 50597-93 Автомобильные дороги и улицы, 2020). This standard determines the indicators of the operational condition of highways, streets and roads in cities and settlements, as well as technical means for traffic control, necessary for traffic safety, protection of life and the environment. The application of these standards is mandatory.

7.7. United States

In order to approach the analysis of road safety factors in the United States, it is necessary to briefly describe the way in which the legal system of this federation functions in this regard. Power is divided at the federal, state, and local levels, with common jurisdiction in some areas, while in others each level of government has its own sovereignty. Congress passes laws at the national level, but most traffic safety legislation is at the state level. Congress typically provides financial support to states for law enforcement and traffic safety strategies.

Driver: The prescribed upper limit for the presence of alcohol in the blood, which is tolerated, is the same in all US states and amounts to 0.8 g / l, with Utah lowering the limit to 0.5 g / l from 2018. Especially young people between the ages of 21 and 24 were the highest percentage of drivers in an alcoholic state, who caused fatal traffic accidents. Drivers under the age of 21 are prohibited from having even the lowest blood alcohol levels while driving in all U.S. states.

Vehicle: The U.S. Code defines motor vehicle safety as protecting the public from the unreasonable risk of an accident and its consequences that may result from the design, construction, or performance of the vehicle (para. 30102, Code).

Road: The speed limit range on urban roads ranges from 25 to 35 miles / hour, on rural roads from 25 to 55 miles / hour, while on highways the vehicle can travel at speeds of 55 to 80 miles / hour, depending on the US state.

7.8. China

Significant efforts have been made to improve safety factors, in particular the construction of road infrastructure. With all this in mind, it was necessary to adopt appropriate regulations, which the Chinese government has done by adopting legislation, conducting training, adopting vehicle safety standards, as well as technological development (Ono, Silcock, & Gerilla-Teknomo, 2013, p. 3).

Driver: China has adopted a points system in case of road safety violations. The period of collecting points is 12 months. If the driver reaches 12 points, he will be ordered to have his driver's license revoked and will have to participate in trainings on traffic safety rules and take an exam.

Vehicle: In 2017, the Chinese legislature amended the national standards of technical safety of motor vehicles, which ensured safety for taking part in the traffic of as many as 400 million motor vehicles.

Road: The speed of motor vehicles on rural roads in China is limited to 100km / h, while on highways the speed limit is 80 to 120 km / h. The speed of urban roads ranges from 30 to 50 km / h. Local authorities may also prescribe lower limits. Express roads, as a specific type of highway, have a prescribed speed of up to 110 and 120 km / h, respectively.

8. Conclusion

What can be concluded is that the construction of infrastructure, with an emphasis on transport, is a need of a large number of underdeveloped countries, as well as those in development, given that the economic crisis after 2008 led to financial inability to start or complete many necessary projects in this area. It is noticed that in such global circumstances, China has positioned itself well with the "Belt and Road" Initiative, within which it makes an offer to countries around the world that is difficult to refuse. This globalization provides China with a strategic advantage in the international market in many areas.

From all the above, it is unequivocally concluded that the factor of safety in road traffic is gaining an increasing role, both in terms of existing modern scientific achievements and technological development, and in terms of the requirements of modern times and future development of mankind.

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INICIJATIVA „POJAS I PUT“ S ASPEKTA NOVE GEOSTRATEGIJE I UTICAJ NA FAKTORE BEZBEDNOSTI U DRUMSKOM SAOBRAĆAJU

REZIME: U radu je predstavljena jedna od aktivnosti na globalnom nivou i, delom, analiziran i njen uticaj na faktore bezbednosti u transportu putnika i roba, kao i u pružanju usluga u ovoj oblasti u sadašnjem trenutku. Pitanje bezbednosti u drumskom saobraćaju ne može se posmatrati odvojeno od naglog ekonomskog i društvenog razvoja. Značajni napori su preduzimani na unapređenju faktora bezbednosti, posebno na izgradnji putne infrastrukture. Imajući sve to u vidu, nužno je bilo doneti odgovarajuću regulativu, što se čini usvajanjem zakonodavstva, sprovođenjem edukacija, usvajanjem standarda za bezbednost vozila, kao i tehnološkim razvojem.

Ključne reči: *bezbednost u drumskom saobraćaju, geostrategija, Pojas i put.*

References

1. Brakman, S., Frankopan, P., Harry, G. & Van Marrewijk, C. (2019). The New Silk Roads: An introduction to China’s belt and road initiative. *Cambridge Journal of Regions, Economy and Society, 12* (1), pp. 3–16, https://doi.org/10.1093/cjres/rsy037
2. Commission Staff Working Document, Analytical Report, Accompanying the document, Communication from the Commission to the European Parliament and the Council Commission Opinion on Bosnia and Herzegovina’s application for membership of the European Union {COM(2019) 261 final}, 2019, Downloaded 2021, May 08 from https://op.europa.eu/en/publication-detail/-/publication/d3bc7b33-8220-11e9-9f05-01aa75ed71a1/language-en

3. Grahovac, B. (2017). *Tri cunamija ili Evropa je ranjena* [*Three Tsunamis or Europe was wounded*]. Beograd: Laguna
4. Ichkitidze, Y., Sarygulov, A. & Ungvari, L. (2017). Potential for Enhancing Traffic Safety on Highways of Russia. *Transportation Research*, 20, pp. 242–246
5. Maliszewska, M. & Mensbrugghe, D. (2019). The Belt and Road Initiative: Economic, Poverty and Environmental Impacts, *World Bank Policy Research Working Paper 8814,* pp. 1–69.
6. Obradović, Ž., *„Pojas i put" na Balkanu i Srbiji* [*"Belt and Road" in the Balkans and Serbia*]. pp. 158–176. Downloaded 2021, May 08 from http://doi.fil.bg.ac.rs/pdf/eb_book/2018/fb_nps/fb_nps-2018-ch10.pdf
7. OECD, International Transport Forum (2019). *Road Safety Annual Report Germany*. Downloaded 2020, December 14, from https://www.itf-oecd.org/sites/default/files/germany-road-safety.pdf
8. OECD Business and Financial Outlook (2018). *China's Belt and Road Initiative in the Global Trade, Investment and Finance Landscape*. Downloaded 2021, May 10, from https://www.oecd.org/finance/Chinas-Belt-and-Road-Initiative-in-the-global-trade-investment-and-finance-landscape.pdf
9. Ono, Y., Silcock, D. & Gerilla-Teknomo, G. (2013). International Lessons for Road Safety in the People's Republic of China, *ADB East Asia Working Paper Series*, No. 1., pp. 1–26, Downloaded 2021, May 22, from https://www.adb.org/sites/default/files/publication/30338/kps-road-safety-web.pdf
10. Raiser, M. & Ruta, M. (2019). *Managing the risks of the Belt and Road*, Downloaded 2021, May 11, from https://blogs.worldbank.org/eastasiapacific/managing-the-risks-of-the-belt-and-road
11. Wang, C. N. (2020). *Belt and Road Initiative and Sustainable Transport*, Europe-China Eco-Cities Link, Downloaded 2021, May 10, from https://green-bri.org/wp-content/uploads/2020/04/Nedopil-Wang-2020_Belt-and-Road-Initiative-and-Sustainable-Transport.pdf
12. *World Health Organization: Strengthening road safety legislation: a practice and resource manual for countries*. Downloaded 2021, November 15 from https://www.who.int/publications/i/item/strengthening-road-safety-legislation
13. Zakon o bezbednosti saobraćaja na putevima [Law on Road Traffic Safety]. *Službeni glasnik RS*, br. 41/09, 53/10, 101/11, 32/13 - odluka US, 55/14, 96/15 - dr. zakon, 9/16 - odluka US, 24/18, 41/18, 41/18 - dr. zakon, 87/18, 23/19 i 128/20 - dr. zakon

14. Zakon o bezbednosti u drumskom saobraćaju [Law on Road Traffic Safety]. *Službeni glasnik RS*, br. 41/09
15. Zakon o bezbjednosti saobraćaja na putevima Crne Gore, [Law on Traffic Safety on the Roads of Montenegro]. *Službeni list CG,* br. 33/12, 58/14, 14/17 - odluka US i 66/19
16. Zakon o javnim putevima, [Law on Public Roads]. *Službeni glasnik RS*, br. 101/05
17. Zakon o osnovama bezbjednosti saobraćaja na putevima u Bosni i Hercegovini [Law on Basics of Traffic Safety on Roads in Bosnia and Herzegovina], *Službeni glasnik BiH*, br. 06/06, 75/06, 44/07, 84/09, 48/10, 18/13 i 8/17
18. Zakon o sigurnosti prometa na cestama [The Road Traffic Safety Act], *Narodne novine*, br. 67/08, 48/10, 74/11, 80/13, 158/13, 92/14, 64/15, 108/17, 70/19, 42/20
19. *ГОСТ Р 50597-93 Автомобильные дороги и улицы. Требования к эксплуатационному состоянию, допустимому по условиям обеспечения безопасности дорожного движения* [*GOST R 50597-93 Highways and streets. Requirements for the operational condition allowed according to the conditions of ensuring road safety*]. Downloaded 2020, December 19 from http://docs.cntd.ru/document/1200003471.
20. *标准联通,一带一路'行动计划* [*Standard Unicom Belt and Road Action Plan*] (2015—2017). Downloaded 2021, May 18, from https://www.yidaiyilu.gov.cn/wcm.files/upload/CMSydylgw/201702/201702150616033.pdf

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THE ORIGIN OF THE CIVIL LAW CODIFICATION IN EUROPE

ABSTRACT: Codification represents the regulation of a certain field (branch) of law by a comprehensive law called the Code (the Civil Code, Criminal Code, etc.). The success of codification depends on two very important conditions: the first one refers to the existence of a dedicated authority, and the second one concerns its implementation in a great country. For the purpose of research, there will be selected the national legislations in order to demonstrate, through various legal systems, how civil codes regulating the field of civil law were originated. Within the scope of this paper, in more detail, we are going to analyze the selected national legislations of France, Austria, Germany, Switzerland and Italy.

Keywords: *Codification, the Civil Code, the Service Contract, the Lease Agreement.*

1. Introduction

In the broad sense, codification is any complete legal regulation of a field of law, regardless of whether it is achieved through one or more legislative acts. In the narrow sense, codification is the regulation of a certain field (branch) of law by a comprehensive law called the Code (Civil Code, Criminal

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Code, etc.). Codification had been already present in the ancient times (Code of Hammurabi, Justinian's Codification) and in the Middle Ages (although feudalism is an epoch of uncodified and particular law), and it became especially present in the transition period from feudalism to capitalism, with the creation of national markets and centralized nation states. "Ancient history was mainly characterized by digests of law in which non-systematized legal norms were partially codified" (Krstinić & Vasiljković, 2019, p. 2).

Codification is the pinnacle of legal activity. It represents a synthesis of legal theory, practice and legal technique, it cannot be passed quickly, nor can it be amended quickly. It should provide the highest achievements in legal science, thus enabling the most efficient and most useful way of application to the social relationship circle regulated by law. In all this, it is necessary to obtain a harmonized, comprehensive, and a clear system as well. The language and style must be framed in such a way making the formulations are unique, clear and easy to understand. It is all of the aforementioned that makes codification a difficult, serious and time-consuming task, and in order to reach a functional normative system, it is necessary to make many compromises. Therefore, legislative process is painstaking and very responsible, especially in the field of civil law, which regulates many sensitive issues of everyday life. Even the codes passed in a short period of time were the result of long discussions and studies. French Civil Code (Code civil) is an example of this. It was redacted in just four months, but it is important to emphasize that its redaction was preceded by extensive and lengthy preparations in theory and practice.

The success of any codification depends on two very important conditions: the first one – existence of a dedicated authority, and the second one - its implementation in a great country. For the purposes of this research, national legislations were selected in order to demonstrate, through various legal systems, how civil codes regulating service contracts had originated. The subject of the analysis is national legislation of Austria, France, Germany, Switzerland, and Italy.

In Bosnia and Herzegovina (civil) law is not codified or unified due to the existence of different levels of legislative authority. In the current constitutional framework, unification has been done only at the aforementioned levels, but there are requirements for codification of civil law (Morait, 2015, pp. 287–307).

2. The French Civil Code

The codification of civil law in France took place in Napoleon's time. Napoleon's role in passing the *Code civil* was crucial. Realizing the fact that

France got a capital legal work, and summarizing his life's work in exile on St. Helena, Napoleon said: "My true glory is not to have won 40 battles...Waterloo will erase the memory of so many victories....but...what will live forever is my Civil Code." The first and most important code is the famous Civil Code (*Code civil*), often called the Napoleonic Code (*Code Napoleon*), which came into force on March 21, 1804. The Code contains only civil law norms in the narrow sense because commercial law was later regulated by special provisions. It is comprised of a total of 2,281 articles and it is divided into an introductory chapter and three books. The first book deals with the law of persons (Articles 5–515) and contains provisions relating to status, marital and family law. The second book deals with the law of things (Articles 516–710): the regulation of property rights - ownership, usufruct, and servitudes. The third book is entitled "Different ways of acquiring property" (Articles 711-2281) and includes the law of obligations and different types of contracts, inheritance rights, marriage and property regime between spouses, securing claims (personal and real), provisions on statute of limitations, etc. The civil procedure is regulated by a special code - *Code de procedure civile*, passed in 1806 (Popov, 2001, p. 43). In terms of style and language, *Code civil* has achieved remarkable clarity and legal technique. The astonishing fact is how the legal technique reached that degree at the very beginning of capitalist development. The language is clean, clear, safe, and briefly interpreted (Lachner & Roškar, 2014, p. 36). The sentences are short and clear, with balanced use of legal-technical terms, without theoretical generalizations and references in one article to other articles, and for which understanding legal education is not necessary.

Special attention is paid to contracts in the Civil Code. The contract represents a condition and legal expression of a commodity production. The contracting parties have full freedom with regard to the content of the contract, providing the content does not infringe the law: "An agreement concluded by law becomes law for the parties who concluded it" (Article 1134), (Šarkić, 1999, p. 237).

The *Code civil* from 1804 is still in force for it contains sufficiently general and flexible rules, and case law has been able to adapt its provisions to new needs. This is actually one of the basic contradictions of any codification. The rules must be flexible enough to be able to adapt to social development. In support of the aforementioned is the fact that no civil code has had such impact on the development of civil law in other countries as the *Code civil*. The civil law of Belgium, Luxembourg and the Netherlands has not been freed from its influence to this day. The Spanish *Codigo civile* from 1889, still

in force, is strongly influenced by the French *Code civile,* especially in the field of law of obligations (Stojanović, 2000, p. 36).

It is important to emphasize that France was a colonial power in the 19th century, and its influence in the Middle East, Oceania and Africa was great, even after the independence in these regions. For example, the Egyptian Code from 1949, while respecting the Islamic law, relies heavily on the *Code civile*. Algeria, Tunisia and Morocco are also countries whose codification is based on the French codification. The legal systems of a large number of African countries (Senegal, Mali, Niger, etc.), Latin America, and even North America were developed under the significant influence of the French law (Stanković, 2013, p. 122).

3. The Austrian Civil Code

The circumstances in which modern Austrian civil law originated were similar to those prevailing in most of the countries of Central and Western Europe in the past three centuries. Each country had its own customs and regulations which made the movement of goods, services, people and capital, difficult.

Therefore, attempts have often been made to remove or at least reduce legal particularism. It is believed the process began in the 12th century, when the first lawyers from Austria, educated at the University of Bologna, passed the knowledge of the Roman legal heritage contained in Justinian's codification. However, the reception of the Roman legal heritage was gradual and slow. Even its use in court proceedings was explicitly prohibited in certain periods. Yet after, the Roman legal heritage penetrated the legal systems of certain nations in various ways. On the other hand, it has never replaced particularism. However, the priority of state policy in order to eliminate legal particularism and create uniform rules for all who live in the territory of the Empire began with the emergence of the central government. In the middle of the 18th century, the formation of a centralized legal infrastructure began, when by order of Empress Maria Theresa, judicial areas were formed - a joint Supreme Court and a joint Ministry of Justice (Nikolić, 2011, p. 314).

In 1753, Empress Maria Theresa gave the order to start the codification, i.e. to make a code which would equalize and establish the law in the empire on solid foundations. At the same time, she explicitly demanded from the commission entrusted with the task to limit themselves to private law, leaving the existing law in force as much as possible and harmonizing the different law in the hereditary lands (provinces), as far as conditions allow. During the codification, she insisted on the application of the principles of brevity, clarity

and simplicity of the rules of conduct, as well as its natural fairness. In terms of content, the Code generally follows Roman law. The Austrian (General) Civil Code (German: *Allgemeines Bürgerliches Gesetzbuch* – ABGB) was passed in 1811, and entered into force on January 1, 1812 in all German hereditary lands of the Habsburg Monarchy (Cvetić, 2002, p. 45). The Code contains 1,502 paragraphs. It is divided into an introduction and three parts, indicating its connection with Roman, i.e. pandect law. The first part (§§ 15–284) regulates personal rights, legal and business capacity, marital and family law (Šarkić, 1999, p. 252). The second part (§§ 285–1341), due to the volume of the matter it regulates, is divided into two segments, one of which refers to real and the other to personal rights - obligations (Kovačević-Kruštimović, 1988, pp. 26–57). The section on real rights contains provisions on the possession, property rights, liens, servitudes and inheritance, while the section on personal rights includes contract law, marriage (property) contracts and liability for damages. The third part (§§ 1342–1502) contains provisions on the determination of rights and obligations, on the modification and cessation of rights and obligations, obsolescence and maintenance.

Given the breadth of the matter covered by the Code, it was considered to be relatively short (e.g. provisions on real burdens and mediation agreements are completely missing, also it contains only a few paragraphs on service contracts), so legal gaps could have been inferred. However, broad but clear formulations should have opened the way to overcoming the problem, because they left room for the creative role of the court and their later adaptation to the new situations both by the court and by legal science (Cvetić, 2002, p. 46). Amendments to the Code were made in the period from 1914 to 1916. Three revisions significantly changed the original text of the Code, so that about 180 paragraphs were re-formulated, supplemented or abolished. The new formulations were inspired by the German Civil Code and covered almost all areas, especially general contract law, the right to lease, service contracts (Stojanović, 2000, p. 46).

After the World War II, extensive legislative reforms in the field of Austrian private law took place outside the Code. Nevertheless, in 1986, about 70% of the provisions of the Code were still from 1811. It is relevant to emphasize that since the 1960s, and especially the 1970s and 1980s, there have been significant reforms in the field of family law that have been incorporated into the Code, and contract law has also been significantly changed by a number of special laws (Cvetić, 2002, p. 47).

The influence of the Austrian Civil Code was great in the countries that were part of the Habsburg Monarchy. It was especially important in our area because it had been in force on the territory of Vojvodina, Croatia, Slovenia,

Slavonia, Bosnia and Herzegovina, while in Serbia ABGB was in force revised and shortened (Mirković, 2021, p. 2). The Serbian Civil Code is an abbreviated translation of the ABGB for the most part (Babić & Jotanović, 2019, p. 57). It should be noted that ABGB in Bosnia and Herzegovina was first applied to those Austrian citizens who lived in "Turkish lands", from January 29, 1855, but since the occupation in 1878, its general application in these areas began. By adopting the so-called "war revisions" from 1914, 1915 and 1916, the Code underwent radical changes by adding certain regulations from the German Civil Code from 1896, but for Croatia and Bosnia and Herzegovina the unrevised text of the Code remained in force (Drino & Shabani, 2014, p. 10). In northern Italy, Venice and Lombardy, it was valid until unification in 1861 (Stanković, 2013, p. 122).

4. The German Civil Code

The conditions for the adoption of a single civil code in Germany were acquired by the unification of numerous kingdoms and principalities in the Second Reich in 1871. Until then, the legal particularism was a reflection of political disunity of German countries. The law valid throughout the German Empire consisted of numerous imperial laws, canon law, and as the most important part – Roman law. In Germany, Roman law was received through Justinian's codification, commonly referred to as Pandect law (from *Pandect*, the Greek name for *Digest*). German jurists did not apply Roman law in its original form, but commented on and adapted it. In addition to the regulations applied in case law, jurists had built a general theory of civil law and law in general on the texts of Roman law. In this way, a system of law called *Usus Modernus Pandectarum* (contemporary Roman law) was created, which was to be overcome by passing a single legislation that would be valid on the country's entire territory. In addition to numerous local rights in the territory of Germany, there were areas in which the law was codified (e.g. in 1794 the Prussian Landrecht was valid in Prussia, in Saxony the Civil Code of the Kingdom of Saxony from 1865, and in the Rhineland and the Grand Duchy of Baden the French Civil Code was valid). Therefore, the German Civil Code was passed (Glišović, 2015, pp. 223–231) on July 1, 1896, after 22 years of working on the project. It came into force on January 1, 1900, which was supposed to symbolically mark the beginning of the 20th century.

The German Civil Code (*Bürgerliches Gesetzhuch – BGB*) for the first time abandoned the institutional three-member system in order to introduce the system of Pandect law. Thus, 2,385 paragraphs, as contained in the Code, are divided into five parts, i.e. five books (Stojanović, 2000, pp. 38–40).

The novelty introduced by the German Civil Code is in the general part at the beginning of the Code which contains norms applying to other parts of the Civil Code, so unnecessary repetition of these provisions in special parts of the Code had been avoided. Special parts of the Code – law of obligations, right in rem, family and inheritance law form independent and complete units. The general part (§§ 1–240) consists of provisions referring to the subjects of civil law - natural and legal persons, general concepts of things and legal affairs, deadlines and their calculation, obsolescence, exercise and protection of rights, real and personal means of security. The second part - the law of obligations (§§ 241–853) regulates debtor-creditor relations, and consists of general rules applying to all obligations, such as sections on the content of obligations, obligations arising from the contract, cessation of the obligation, obligations with multiple debtors and creditors. A special part of the Law of Obligations includes chapters referring to certain contracts, such as sale, lease, loan, service, deposit, etc. Also, this part regulates other sources of obligations not originating from the contract: management without orders called *negotiorum gestio*, legally unjust enrichment and obligations for compensation of damages arising from illegal actions. The third part – Right in Rem (§§ 854–1296) regulates legal relations regarding things such as possession, mortgage, the right of pledge and pledge of rights, the right of pre-emption, etc. The fourth part - Family Law (§§ 1297–1921) consists of three sections: marriage, kinship and guardianship. The fifth part (§§ 1922–2385) refers to inheritance law and regulates the transfer of property in the event of death from the deceased to the heirs and includes provisions relating to intestate and testamentary succession.

In relation to the codes passed before the German Civil Code, in addition to the original systematics, it contains some other novelties such as: provisions on legal persons and types of legal persons (associations and institutions), insurance contract, third-party beneficiary contract, etc. It can be concluded that the Code is characterized by pronounced individualism and liberalism from the end of the 19th century. But, although the legislator's aspiration was to regulate civil law in a comprehensive way, to anticipate as many legal situations as possible in detail, the result was an overemphasized casuistic approach and scope. On the other hand, the Code is characterized by professional legal terminology, abstract formulations, precision and depth of thought complicated for people without legal education. In other words, it is written more as a scientific work. The Code makes extensive use of the referral technique, i.e. one paragraph refers to another or even more of them at the same time making it difficult to navigate the Code and its application in practice (Popov, 2001, pp. 47–49).

Some areas of the German Civil Code had undergone significant substantive changes, with some being made by direct intervention in its content, and some implemented through the enactment of special legislation that replaced or limited its provisions. The provisions of civil law underwent minor changes during the rule of the National Socialists, because the unlimited interpretation of the law was an important political tool for achieving the goals of National Socialism in civil law (Đorđević & Piner, 2019, p. 76).

Its influence on the latter codifications is vast, but far less than the French. Under the influence of this code, the Japanese Civil Code was drafted in 1898. Following the example of the German Code, Thailand passed the Civil Code in 1925. A draft of the Chinese Civil Code was created in China in 1930, but did not enter into force. In Brazil (1916) and Peru (1936), civil codes were adopted on the model of the German Civil Code, and it influenced the adoption of civil codes in the following European countries: Poland, Greece, Hungary and Austria (revisions from 1914, 1915 and 1916) (Stanković, 2013, pp. 118–125).

5. The Swiss Civil Code

When it became definitely clear in Switzerland, as it had been in Germany, that the adoption of a single civil code was absolutely necessary, there was no constitutional basis for its adoption. The constitutional reforms from 1874 and 1883 (Nikolić, 2002, pp. 55–64) increased the legislative competence of the federal level of government in the field of civil law, and in 1898 it was extended to the entire field of private law by referendum. However, there were other, perhaps much deeper reasons influencing the shaping of Swiss law. The Swiss Confederation consists of 26 cantons inhabited by three large ethnic groups - Germans (65%), French (18%) and Italians (10%). In Switzerland, three official languages are used in parallel: German, French and Italian. When it comes to religion, there is a distincit division between Catholics (46,1%) and Protestants (40%) where each group has its own view of the matters of legal regulation. There are many political parties in Switzerland, and the Christian Democratic People's Party, the Green Party, the Social Democratic Party, the Radical Democratic Party and the Swiss People's Party have a significant influence in the Parliament. Besides the aforementioned, as many authors state, the legislative work should reconcile the spirit of the city and the countryside, and establish a balance between a deep-rooted tradition and the need for modernization.

When Eugen Huber, a professor of German legal history and politics, began a comparative analysis of Swiss cantonal civil law, Switzerland already

had the Code of Obligations (German: *Obligationenrecht – OR*), therefore he drafted a Civil Code without law of obligations. After a long work and discussion, the Swiss Civil Code (*Zivilgesetzbuch – ZGB*) was passed in 1907, and entered into force on January 1, 1912. The systematics of the Civil Code is similar to the pandect systematics of the German Civil Code, but instead of the general part it has a short introductory part which contains the norms regarding the Code's entry into force, scope of law, the application of general provisions on other civil law, legal gaps, etc. The Code had 970 articles divided into four parts (books): the law on legal status (legal entities), family law, inheritance law and property law (Popov, 2001, p. 49). After the adoption of the Swiss Civil Code, Huber revised the existing Code of Obligations, which was adopted in 1911 and entered into force together with the Swiss Civil Code on January 1, 1912. Even during the work on the revision of the Code of Obligations, the question of the relationship between the Code of Obligations and the Civil Code was raised, i.e. whether the provisions of the Code of Obligations should be included in the Civil Code thus creating a single civil code with a single numbering. Eventually, it was decided the Code of Obligations should be considered the Book Five of the Civil Code, but to remain as special law with special numbering entitled as the "Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations)". Many amendments have been made to the Swiss Civil Code (Konstantinović, 1982, pp. 606–616).

The Swiss Code of Obligations contains not only civil but also commercial law because there is no special commercial code in Switzerland as in most countries. The Swiss Civil Code was drafted under the predominant influence of German legislation and German legal science. Often editors sought only inspiration in these sources, and inspiration is not imitation. It is important to point out the editors of the Code of Obligations took care its content serves the interest of all citizens for it regulates relations from everyday life, society and each citizen individually. That is why care was taken to make the Code understandable for every citizen, which can be seen from the Code's language as well as the applied techniques.

Although it was compiled under the great influence of German law and based on its regulations, it differs significantly from the German Civil Code. While the German Civil Code is expressed in a very abstract way - its provisions resembling to codes - the Swiss Civil Code shows a tendency towards as much concreteness as possible. It uses short and clear formulations. Each paragraph has only one sentence expressesing a completely specific thought. Furthermore, the provisions of the Swiss Civil Code do not refer in numbers to the provisions

of its other articles. In this respect, the Swiss Code of Obligations, as well as the Swiss Civil Code, are reminiscent of the French Civil Code from 1804 - an example of a clear and precise style, which one of the literary greats, Stendhal, read to improve his style (Konstantinović, 1982, pp. 614–615).

The Swiss Civil Code attracted a great deal of attention in many countries. It served as a proposal for the creation of the Civil Code in Italy in 1942 and Greece in 1940, while the influence of this code was felt in Poland, Sweden, Bulgaria, Hungary, etc. The exception was Turkey, which took over the Swiss Civil Code and the Code of Obligations in its unchanged form in 1926 (Stojanović, 2000, p. 46).

6. The Italian Civil Code

The first civil code in Italy was modeled on the French Civil Code. It was passed in 1865, and entered into force on January 1, 1866. The Italian Civil Code (Italian: *Codice civile*) from 1866 is divided into three books. The first one is on persons, the second on the goods, the property and its modifications, and the third on the ways of acquiring and transmitting property and other rights over things. What distinguishes this code from other codifications of the 19th century, and even from the French Civil Code according to which it was made, is the introductory section, the so-called *disposizioni preliminari*, which for the first time contained the norms of private international law, which was a novelty in the history of codification.

The social and economic changes made after the First World War imperatively imposed the reform of civil and commercial law in Italy. After a long period of work, the new *Codice civile* came into force on April 21, 1942, with 2,969 articles. The Code uniquely regulated both civil and commercial relations. In order not to burden the already extensive Code, the provisions of maritime law were not included, which otherwise fall under commercial law, but a new *Codice della navigazione* was drafted entering into force on the same day as the Civil Code.

The Italian Civil Code in the first chapter, i.e. in the preliminary provisions, regulates sources of law, talks about the application of the law in general, the legal interpretation, the temporal validity of the law and private international law. In addition to the preliminary provisions, the Book One contains provisions on subjects of civil law and family law. The Book Two regulates inheritance law, and also contains provisions on gifts. The Book Three contains right in rem, while the Book Four pays special attention to the law of obligations, among other things - adhesion contracts (agreements by consent). These contracts are

typical for modern economy and legal transactions. Judicial intervention was also allowed in order to adapt the contract to changed circumstances (*clausula rebus sic stanibus*). The Book Five is of particular interest for it describes the general principles of employment contracts, collective labor agreements, as well as work in companies. Also, it regulates the entire company law, business protection, trademark protection, copyright and patent law and the law against unfair competition. The Book Six is entitled "Of the Protection of Rights", but it also contains provisions important for the entire Code, such as regulations on registers, evidence, obsolescence, etc.

The Italian Civil Code from 1942 is a modern code both in terms of its content and its legal technique. The language of the Code is precise and clear as well as its systematics.

7. Conclusion

Codification is a legal act fully and systematically regulating all important issues in certain field. The regulation of the field of civil law with one code is certainly more transparent, harmonized and complete. The term *civil code* in the sense of codification emerges in bourgeois legislation. Desiring to unify the field of civil law in all states of the "bourgeois" type, civil codes were passed.

The aim of this paper was to show how the civil codes regulating the field of civil law originated. The first code was passed in France immediately after the Revolution of 1789, and combined the ideas of the French Revolution. On the other hand, efforts to unify civil law in Austria finally bore fruit in 1811 with the publication of the General Civil Code (ABGB), which was a synthesis of received Roman law and natural-law school, but significantly more conservative than the French Civil Code. In Germany, the Civil Code (BGB) was enacted in 1896 and entered into force in 1900.

After a long work and discussion, the Swiss Civil Code (ZBG) was adopted in 1907, and entered into force on January 1, 1912. The systematics of the Civil Code is similar to the pandect systematics of the German Civil Code.

The first civil code in Italy was passed in 1865, and entered into force on January 1, 1866. It was modeled on the French Civil Code.

As the provisions of these codifications are still in force in many countries, adapted to the circumstances of the time and the needs of legal practice, we can conclude they represent the legal foundations of contemporary civil law, and therefore their importance is even greater.

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NASTANAK GRAĐANSKIH KODIFIKACIJA U EVROPI

REZIME: Kodifikacija je uređivanje neke oblasti (grane) prava jednim sveobuhvatnim zakonom koji se naziva zakonik (građanski zakonik, krivični zakonik i sl.). Uspeh svake kodifikacije zavisi od dva veoma važna uslova: prvi – da postoji jedna posvećena vlast, i drugi – da se ona realizuje u jednoj velikoj zemlji. Stoga će u cilju istraživanja navedenog predmeta biti izabrana nacionalna zakonodavstva kako bi se posredstvom različitih pravnih sistema prikazalo na koji način su nastali građanski zakonici koji regulišu građanskopravnu oblast. U okviru ovog rada detaljnije će se analizirati odabrana nacionalna zakonodavstva Francuske, Austrije, Nemačke, Švajcarske i Italije.

***Ključne reči*:** *kodifikacija, Građanski zakonik, nacionalna zakonodavstva.*

References

1. Babić, I., & Jotanović, R. (2018). *Građansko pravo* [*Civil Law*]. Banja Luka: Pravni fakultet Univerziteta u Banja Luci
2. Cvetić, R. (2002). Sistematika građanskih zakonika [Taxonomy of Civil Codes]. In: Kovačević-Kuštrimović, R. (ed.) *Građanska kodifikacija. Sv. 1* [*Civil codification*] (pp. 45–62). Niš: Pravni fakultet, Centar za publikacije
3. Drino, Dž., & Šabani, A. (2014). Rimskopravni temelji austrijskog građanskog zakonika (ABGB). [Roman Law Foundations of the Austrian Civil Code (ABGB)]. In: *Austrijski građansk zakonik (1811-2011)*: *zbornik radova sa naučnog skupa.*[*Austrian Civil Code (1811-2011): Proceedings of the scientific conference*] (pp. 9–15). Tuzla: Pravni fakultet
4. Đorđević, S. & Pirner, Š. (2019). Neograničeno tumačenje nemačkog građanskog prava u vreme nacionalsocijalizma [Unlimited Interpretation

of German Civil Law in the Era of National Socialism]. *Anali Pravnog fakulteta u Beogradu*, *67* (2), pp. 51–83
5. Glišović, L. (2015). Nemački građanski zakonik od pravnog partikularizma do kodifikacije građanskog prava [The German Civil Code from Legal Particularism to the Civil Law Codification]. *Strani pravni život*, *59* (1), pp. 223–241
6. Kovačević Kruštimović, R. (1988). Podela građanskih subjektivnih prava na stvarna i obligaciona [Division of Subjective Civil Rights on Rights in Rem and Obligations]. *Anali Pravnog fakulteta u Beogradu*, *36* (1–2), pp. 26–57
7. Konstantinović, M. (1982). Predgovor za prevod Švajcarskog zakonika o obligacijama [Preface to the Translation of the Swiss Code of Obligations]. *Anali Pravnog fakulteta u Beogradu*, *39* (3–4), pp. 606–616
8. Krstinić, D., & Vasiljković, J. (2019). First codifications of law. *Pravo – teorija i praksa*, *36* (4-6), pp. 1-14, DOI: 10.5937/ptp1904001K
9. Lashner, V., & Roškar, J. (2014). Građanske kodifikacije u Europi s posebnim osvrtom na 19. i 20. stoljeće [Civil Law Codifications in Europe with Special Regard to 19th and 20th Century]. In: *Austrijski građansk zakonik (1811-2011): zbornik radova sa naučnog skupa.* [*Austrian Civil Code (1811-2011): Proceedings of the scientific conference*] (pp. 33–53). Tuzla: Pravni fakultet
10. Morait, B. (2015). Kodifikacija građanskog prava u Republici Srpskoj [Civil Law Codification in Republika Srpska]. *Godišnjak Pravnog fakulteta Univerziteta u Banjoj Luci*, (37), pp. 287–307
11. Mirković, Z. (2021). Rad Živojina Perića na kodifikovanju građanskog zakonika međuratne Jugoslavije [The Work of Živojin Perić on the Codification of the Civil Code of Interwar Yugoslavia]. *Anali Pravnog fakulteta u Beogradu*, *69* (1), pp. 1–35
12. Nikolić, D. (2011). Dva veka Austrijskog građanskog zakonika (1811–2011) [Two Centuries of the Austrian Civil Code (1811–2011)]. *Zbornik Matice srpske za društvene nauke*, *62* (2), pp. 314–328
13. Popov, D. (2001). *Građansko pravo: opšti deo* [*Civil Law: The General Part*]. Beograd: Službeni glasnik
14. Stojanović, D. D. (2000). *Uvod u građansko pravo* [*Introduction to Civil Law*]. Beograd: S. D. Stojanović
15. Stanković, E. (2013). Austrijski građanski zakonik kao izvornik Srpskog građanskog zakonika [Austrian Civil Code as the original of the Serbian Civil Code]. *Godišnjak Fakulteta pravnih nauka*, *3* (3), pp. 18–125
16. Stanković, O., & Vodinelić, V. V. (1996). *Uvod u građansko pravo* [*Introduction to Civil Law*]. Beograd: Nomos
17. Šarkić, S. (1999). *Opšta istorija države i prava* [*General History of the State and of Law*]. Beograd: Izdavačka kuća Draganić

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THE NORMATIVE REGULATION OF THE AIR PROTECTION IN LEGISLATION OF REPUBLIC OF SERBIA

ABSTRACT: Clean environment is a basis of people's health, but of their daily lives too. Air, water and environment are increasingly polluted under the influence of various threatening factors, which requires a legislative support. Through the provisions of the Law on Environmental Protection (2004), the air protection has in principle been provided, while the specific solutions have been given by the Law on Air Protection (2009), as a lex specialis, which regulates in detail the management of air quality and determining measures, the methods of organizing and controlling the implementation of protection and improvement of air quality as natural values of a general interest enjoying a special protection. In addition to the aforementioned laws, air protection is also regulated by by-laws, namely by various decrees and regulations. The subject of this paper is the analysis of normative solutions for air protection (ambient) according to the legislation of Republic of Serbia and the impact of the important factors on air pollution.

Key words: *quality air, air pollution, environment, causes of air pollution in Republic of Serbia.*

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1. Introduction

Air pollution implies the transfer of harmful natural and synthetic substances into the atmosphere as a direct or indirect consequence of human activity (Stevanović, 2003. p. 145). The transformation of environmental awareness into visible results began only in the seventies of the twentieth century, when the first regulations were adopted at the international level which regulate various aspects of environmental protection.

The 1991 Law on Environmental Protection is the first systematic law that provides for certain issues to be regulated by special laws, such as assessment of the impact of plans, programs and projects on the environment, integrated pollution prevention and control, nature protection, air protection, water, land, forests, geological resources, chemical management, waste management, noise and vibration protection, etc.

Until the 1990s, more precisely, until 1997, air quality was regulated on the basis of emission limit values by the Rulebook on emission limit values, manner and deadlines for recording data (1997). Which determines the limit values of emissions of harmful and dangerous substances in the air at the source of pollution, manner and deadlines for measurement and recording of data on emission measurements, sources of pollution, but that was not enough, so the Law on Air Protection was passed.

It is concluded that the laws on environmental protection, as well as on air protection were passed relatively late, which should not be surprising, although Serbia aspires to EU membership, and it was not up to date on this issue, moreover, the Treaty establishing the European Union. Union and the Treaty establishing the European Community does not clearly define the concept of the environment, they are mentioned as a goal, but not clearly enough.

So, only in the last couple of decades has the awareness of environmental protection been aroused, more precisely when nature “rebelled” and hundreds of thousands of people died. The Republic of Serbia has been in the process of harmonizing internal regulations in the field of air protection with EU regulations for more than ten years (Todić & Dujić, 2020. p. 39). The first RS regulations in the field of environment, whose harmonization with EU regulations started in 2002, through the activities of the Regional Center for the Environment for Central and Eastern Europe, there were four systemic laws adopted in 2004 2004 - Law on Air Protection, Law on Environmental Impact Assessment, Lawon Strategic Environmental Assessment and the Law on Integrated Prevention and environmental pollution control (Todić & Dujić, 2020. p. 39).

The paper will not proceed to a detailed analysis of all regulations at the national and international level that regulate air protection, but those that the authors consider important to mention in this paper. This is stated for the reason that a detailed analysis, ie an individual analysis of all regulations governing the subject matter would exceed the set framework of work.

In the next part of the paper, we will talk in general about the causes of air pollution, and then about its normative regulation in the Republic of Serbia. The authors of the paper will also refer to the harmonization of regulations at the national level with EU regulations, regarding air protection.

2. Sources of air pollution (general)

Air pollution has reached worrying proportions (Marković & Ditrih, 2018. p. 19). Various forms of classical industrial production, mining, production of final products, marketing of the same and final disposal in the form of solid waste are the basic elements of the phenomenon of pollution (Mišković, 2011, p. 7). Pollution has evolved with the progress of civilization from minimal pollution of air (fires), water and land to today's radioactive pollution (nuclear tests, accidents at nuclear power plants, use of illicit weapons in military interventions) and pollution with various toxic substances (Đorđević, 2019, p. 196).

The causes of environmental and air[1] pollution can be divided into natural and artificial. Natural causes of pollution occur beyond human activity, such as volcanoes, earthquakes, floods, while artificial pollutants are products of human activity, ie his hands. Regardless of whether they are natural or artificial pollutants, it is a matter of how they are changing the environment, to the detriment, not only in regards to environment by herself, but also of man, so it is necessary to act quickly, effectively, and help preventively.

The biggest polluters are considered to be the industries of construction material, the plastics, pulp and paper industries, road, rail, city, river and air transport, households in villages and cities, as well as various energy facilities. However, pollutants can be further divided into local and global, with local pollutants affecting narrower areas, while global pollutants represent mass flows that carry polluted particles over long distances such as the 1986 Chernobyl disaster and Fukushima in 2011.

Long-term air pollution can, in addition to deteriorating its quality, have consequences, such as massive negative hereditary mutations, acid

[1] Air is a mixture of gases consisting of 78% nitrogen, 21% oxygen, 0.03% carbon dioxide and small amounts of other gases (neon, argon), water vapor, dust and bacteria.

rain, reduced oxygen content in the atmosphere, ozone depletion, increased CO2 in the atmosphere and its impact on the Earth's energy balance, general environmental pollution (Đarmati, 2007, p. 12).

Having in mind the above and understanding the harmful consequences that various causes of air pollution could produce, the competent authorities of the Republic of Serbia took this problem very seriously by somehow "obliging" the Republic of Serbia to implement EU regulations on air quality protection.

The causes of air pollution are not only external, but also physical sources of pollution. The work of the state of the Republic of Serbia in combating harmful causes is important here. It should not only be accepted that the adoption and signing of international agreements, directives or regulations is sufficient, their implementation is more important.

Air protection in developed countries takes place in institutional form in the form of implementation of the Convention on the Reduction of Transboundary Air Pollution (Long Range Transboundary Air Pollution – LRTAP) and a number of regulations and measures at local and regional level, primarily related to the control of air pollution in urban areas (Bogdanović, Marjanović & Pilipović, 1993, p. 35).

The National Assembly of Serbia ratified the Aarhus Convention on May 12, 2009 in order for the Government of Serbia to adopt the Strategy for the Implementation of the Convention on Access to Information, Public Participation in Decision-Making and the Right to Legal Protection in Environmental Matters (2011). The reasons for developing the strategy for the implementation of the Aarhus Convention are reflected in the indisputable fact that the Aarhus Convention is one of the most advanced international treaties for environmental protection, including air, although it requires access to all information to civilians and stakeholders, environmental policies, as it respects people's right to live in a healthy environment. Namely, according to Section A.2 (Section A.2: European Pollutant Release and Transfer Register (E-PRTR)) of the said Convention, whether it is air or water, for each installation there is information on the amount of pollutants they emit. The European Environment Agency (EEA) 10 coordinates EIONET (European Information and Observation Network in the field of environment) with the aim of ensuring the flow of information between national systems and the European Information System. If the concentration of a particular pollutant is dangerous to human health, the Ministry, the competent authority of the Autonomous Province and the competent authority of the local self-government unit shall inform the public via radio, television, daily newspapers, Internet and / or other appropriate means (Article 23 of the Law on air protection).

Namely, air pollution is an environmental problem of a transnational character, although it does not only affect the environment where the epicenter of pollution is, but is transmitted at high speed. Also, the consequence does not occur only in the place of pollution, but it can also occur in a completely different location, even in another country. Namely, certain issues such as legal protection, information, etc. it should be regulated in detail by law. The Commercial Court is up-to-date and correctly judges when it comes to polluting emissions from legal entities.

2.1. Sources of pollution in the Republic of Serbia

The most common causes of air pollution in Serbia are poor quality fuel combustion, poor quality motor fuels, use of old vehicles without catalysts, outdated technology in the industrial and energy sectors, lack of national cadastre of air pollutants, lack of national greenhouse gas inventory and inadequate air quality monitoring network (Besermenji, 2017, p. 3).

Every year, the Government adopts the List of zones and agglomerations in which exceedances of limit values originating from natural sources have been established (article 24, paragraph 1 of the Law on Air Protection). The list of zones and agglomerations is adopted at the proposal of the Ministry, based on data on concentrations and sources, as well as evidence showing that these exceedances can be attributed to natural sources (article 24, paragraph 2 of the Law on Air Protection). However, if the overruns can be attributed to natural causes, such overruns will not be considered overruns within the meaning of the Air Protection Act.

The goal of air control is reflected in determining, measuring the degree of air pollution and eliminating pollution to protect human health. However, a seemingly very simple procedure can become very complicated. Namely, since the instruments are set to 24 hour measurements, when the concentration of emitted particles is divided into 24 hours, the concentration is within normal limits, although within half an hour, there was “something” in the air, maybe 40 times more than the maximum allowed (Besermenji, 2007, p. 7). It happens when measuring air pollution in Serbia that some industrial production releases illegal substances from chimneys during 30 minutes or an hour, and then citizens complain that they feel bad (Besermenji, 2007, p. 7).

Therefore, the underdeveloped economy in Serbia is not only an impact on the existence of its population, ie its economy, but also on the health of the people living on its territory. Modernization, in addition to huge progress in improving the socio-economic conditions for human life, has brought

environmental dangers (Pejić, 2015, p. 2). Most companies are on the verge of liquidity, and better quality, and therefore more expensive equipment, such as. For them, better filters are, from an economic point of view, an unnecessary expense. Namely, companies have protection equipment, but not quality. The appeal to the competent authorities is to "try" to participate in part in the purchase of better equipment for environmental protection companies, regardless of being private, and not to individuals but to all, because such companies employ the population in Serbia and indirectly affect its economy.[2]

Therefore, the state has an interest in allocating subsidies from its budget to all private companies, even though they employ workers, ie citizens of Serbia, and in that way will reduce air pollution, provide a healthier environment for their citizens and themselves.

3. Consequences of air pollution and prevention measures

The law on the protection of the air from pollution was passed in 1965, when the environmental awareness of the competent authorities began to awaken. As stated, consciousness began to awaken only when catastrophic consequences occurred not only on Earth but also on human health.

The website of the Provincial Secretariat for Urbanism and Environmental Protection of the APV contains the adopted laws, decrees and regulations of air protection for review of basic information. Reports on the state of ambient air quality for 2003-2008, then from 2012-2019 are also available years.

Air pollution is a global problem. Despite the prohibitions listed in the law regarding the production of substances that damage the ozone layer, the consequences are increasingly visible without the possibility of "repair". This refers especially to the diseases[3] we encounter. Furthermore, one of the biggest polluters are cars, and even gasoline is a dangerous thing. From the explanation of the Judgment of the Supreme Court of Serbia (U. 4360/2004 of 8 June 2006 years): ..." Based on these facts, the first-instance decision correctly ordered the defendant to repair the accident site - gasoline tank, as a dangerous substance owned by the defendant, for whose needs gasoline was transported and to repair it. According to the project of the authorized professional organization, the second-instance decision rejecting

[2] This is not about subsidies for starting a "business" or a competition for projects announced by the state in order to co-finance only "selected companies", but an appeal for at least participation, if not the purchase of equipment by the state authorities to all companies. for the protection of the environment in Serbia.

[3] Based on some research, it is evident that people living in the region where, for example. oil refineries are more likely to get cancer than people who do not live.

the prosecutor's appeal as unfounded is also correct. Transporter of hazardous and harmful substances is obliged to bear the costs of recultivation, ie remediation of land and to pay compensation for permanent change of land use in accordance with the law. Based on the provision of Article 86, paragraph 2 of the said Law, which stipulates that in case of damage caused by an accident which endangers or pollutes the environment, the company that caused the damage is liable for the damage, according to the principles of liability without guilt."

Namely, the court correctly ruled, bearing in mind that motor gasoline spilled on the street and surrounding land after a traffic accident resulted in environmental pollution, and the owner as the holder of the dangerous thing (assenger motor vehicle) is responsible in accordance with the Law on Obligations (article 174).

What most do not understand, and there is a low level of consciousness, is that if people do not see something with their own eyes, they do not understand the seriousness of the damage that has occurred or may occur. Air is a substance that is not visible, not tangible and what is not understood is that it doesn't have to be black or any other color to be polluted. Just as people's awareness has risen to the level of understanding that they can get sick from viruses in the air which are not seen, so people need to understand that certain particles in the air can be extremely dangerous and can have the most serious consequences, such as death of hundreds thousands of people, and at that moment it does not matter how much a company earns and whether better equipment has a higher cost, because that is more important than man, machine, equipment or law.

The competent authorities adopted the Decree on Monitoring Conditions and Air Quality Requirements (2010), where are prescribed the conditions for monitoring and requirements for better air quality. The Law on Air Protection prescribes solutions regarding the monitoring system in a general manner, in this regard, the powers have been transferred to the Government of the Republic of Serbia to specify the legal provisions by a decree. The Rulebook on Conditions for Issuing Approvals to Operators for Measuring Air Quality and/or Emissions from Stationary Pollution Sources (2012), prescribes even closer conditions for issuing approvals to operators that independently measure air quality and/or measuring emissions from stationary sources of pollution. Measurement of air pollution is performed by automatic and manual measurements by numerous professional institutions.

Pursuant to Article 3 of the Regulation, the requirements for better air quality are the limit values for the level of pollutants in the air; upper and lower limits for assessing the levels of air pollutants; tolerance limits and tolerance values; concentrations hazardous to human health and concentrations reported

to the public; critical levels of air pollutants; target values and (national) long-term targets of air pollutants; deadlines for reaching limit and / or target values. The results of air quality monitoring for September 2019 show that the air in Novi Sad is polluted in terms of coarse suspended particles, which are marked as PM10 and amount to 61.87 μg / m3 , which is alarming, and in 2013 the air in Novi Sad was reached the category of clean where no measuring stations exceeded the reference limits for the concentration of pollutants.

According to the Report on the state of air quality in the Republic of Serbia for 2020 issued by the Environmental Protection Agency, air quality has deteriorated from previous years. Automatic air monitoring stations show data that exceed the limit values. According to the report, exceedances of the permitted limits were observed in the results of measurements of sulfur dioxide, nitrogen dioxide, suspended particles PM10, PM25, while in terms of carbon monoxide it was not.

The measurement results are available on the website of each individual value. Also, it would be preferable for the competent authorities to inform civilians on the same site about the actions taken to reduce pollution and prevention measures, which can than be used to warn citizens not to move to certain parts of the city where the concentration of harmful matter is high, or to not drink water from household taps, etc.

Furthermore, landfills, which also cause air pollution, should not be neglected. Inadequate sorting and disposal of garbage dumps in not designated area, and especially in illegal places, is a source of feces, bacteria harmful to human organisms, but also to the air we breathe. Most people today resort to burn landfills, which reduces their surface area by up to 90%, but destroys the ground, the greenery on which it is located. Plants intended for proper way of removing waste should be formed, instead of burning on greenery, which leads to environmental pollution, and thus air, and it is likely that, under the influence of wind, it can expand and reach other areas, or in the worst case take away people's lives.

According to the information available on the website of the Provincial Secretariat for Urbanism and Environmental Protection of the Autonomous Province of Vojvodina, a meeting was held to discuss the analysis and implementation of activities related to improving sustainable environmental planning by improving public service (administration, inspection and supervision). and wastewater management, through joint initiatives on both sides of the border, including the creation of databases on waste, wastewater and environmental pollution caused by illegal landfills.

Regarding the harmonization of regulations of the Republic of Serbia with EU regulations, it should be noted that the structure of EU regulations

related to "air protection" includes a total of 26 legal acts of this organization which are classified into the following groups: "air quality", "pollution" atmosphere", "motor vehicles", "other vehicles" and "industry", and the largest number of regulations is in the group related to "air pollution" with a total of nine regulations (Todić & Dujić, 2020. p. 42).

During the drafting of the Law on Air Protection, in 2009, the legislator harmonized the solutions related to air protection with the EU regulations governing this matter. As there were changes to the law after the year of its adoption, we are of the opinion that it is largely in line with EU regulations, and that bylaws are in line with the law. A comparative review of the norms contained in the regulations of the Republic of Serbia and the EU on several specific issues shows that in the Republic of Serbia, based on the Law on Air Protection, established a basic normative framework containing all elements of Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air in Europe, with the proviso that some of these elements are not fully in line with the said Directive, such as RS does not have an appropriate strategic document that would define the framework of national policy in the field of air protection, although the Law on Air Protection prescribes the adoption of such a document (Todić & Dujić, 2020. p. 49). In the case of "air quality" relate to the limit values, target values and obligations regarding the concentration of exposure for air quality set out in Directive 2008/50/EC and Directive 2004/107/EC of the European Parliament and the Council (Todić & Dujić, 2020. p. 45). Article 3 of Directive 2008/50/EC stipulates that Member States are required to designate competent authorities to be responsible for matters in the context of measuring and assessing ambient air quality and for coordination within their territory. How is it, for example, on the website of the Provincial Secretariat for Urbanism and Environmental Protection it is stated that monitoring of ambient air quality in APV is carried out by numerous professional institutions, it would be desirable, especially for the purpose of public information of citizens, to appoint indebted institutions.

4. Conclusion

The progressive development of civilization has led to the disruption of natural balance. Decades ago, man used nature relatively modestly, although he did not have any knowledge about it, but back then the modern technique and technology were not yet developed.

After the conducted research, and better acquaintance of man with nature and its riches, there has been a constant exploitation of her. Man exploits

nature to it's limits, and exclusively in his own interest, not caring about the potential consequences that are becoming more and more catastrophic and do not end only with diseases but also with the death of people.

The aspiration of the state should be to develop the economy and provide a better material standard to its citizens, and that is an indisputable fact, but not if it harms people's health. Despite a number of acts adopted in the field of air protection, air pollution has not been reduced, moreover, measurements show that the concentration of harmful substances has increased.

Serbia is showing readiness to implement regulations of an international character, which has been done to a large extent, but we are still of the opinion that it should be taken more seriously by implementing them with pre-set goals. Therefore, it is indisputable that measuring instruments are provided, however, a commission or simply a team of experts should be formed who would have their headquarters in several parts of Serbia and study ways and measures to reduce air pollution. It is not enough to implement regulations and provide instruments, ie measurement conditions, but also to take those actions that would reduce air pollution

Furthermore, Serbia is one of the developing countries, and its economic development is very low, so that the measurements show a high degree of air pollution. Companies that employ citizens, but are not equipped with quality protective equipment for workers or quality equipment of plants that emit negative particles into the air that can be fatal for every citizen, are a risk with a large potential number of side effects, are not good investment.

Therefore, the entire economy of the state and its development should be in accordance with the "laws of nature" and should be accompanied by quality equipment, quality measuring instruments that were discussed in the paper.

Instead of open tenders for projects co-financed by the state, the state should participate in the purchase of equipment for all companies, and control that they are properly used, if necessary on a daily basis. Control of the proper use of equipment, such as filters, would be achieved by entrusting the same to the inspection bodies in the competence. It is a proposed "difficult" task for the state and requires the allocation of a larger amount of money[4], however, the state is the home of all its citizens and it should be the first to make sure to provide a healthy environment to its citizens.

[4] Pursuant to Article 71 of the Law on Air Protection, funds for financing the protection and improvement of air quality are provided in the budget of the Republic of Serbia and from the obligations of operators in accordance with the law.

The state should severely punish every offender with a fine, and the competent authorities including courts should resolve the proceedings as soon as possible in order to make the effect more pronounced and faster. Although Serbia aspires to join the European Union, in addition to good normative legislation, it is necessary to take serious steps regarding all of the above.

Neither the Law on Air Protection, nor the regulations or ordinances define what is meant by quality air. Analyzing the legal solutions, it is concluded that polluted air is considered to be the presence of harmful ingredients in excess of the permitted quantities, which are strictly prescribed by the Decree on conditions for monitoring and air quality requirements.

Adequate mechanisms need to be found at both the national and international levels to prevent an increase in air pollution. The best results would be shown by international cooperation of states on this issue, as prescribed by Directive 2008/50/EC itself. At the national level, the goal of reducing air pollution could be achieved by hiring a team of experts in the field of environmental protection, ie air protection who would approach a detailed analysis of the causes of air pollution in the Republic of Serbia and determine how to eliminate it. Setting original conclusions based on a thorough analysis of relevant regulations at both national and international level should resolve the doubts that arise regarding air pollution, ie to determine not only the degree of harmfulness of pollution, but to identify and implement measures to air pollution has decreased.

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NORMATIVNO REGULISANJE ZAŠTITE VAZDUHA U PRAVU REPUBLIKE SRBIJE

REZIME: Čista životna sredina je osnov zdravlja ljudi, ali i njihovog svakodnevnog života. Vazduh, voda i okolina su sve više zagađeni pod uticajem različitih ugrožavajućih faktora što iziskuje legislativnu potporu. Odredbama Zakona o zaštiti životne sredine (2004) načelno je obezbeđena zaštita vazduha, dok su konkretna predmetna rešenja predviđena Zakonom

o zaštiti vazduha (2009), kao *lex specialis*, a kojim se detaljno uređuje upravljanje kvalitetom vazduha i određivanje mera, načina organizovanja i kontrole sprovođenja zaštite i poboljšanja kvaliteta vazduha kao prirodne vrednosti od opšteg interesa koje uživaju posebnu zaštitu. Pored navedenih zakona, zaštita vazduha je uređena i podzakonskim aktima, odnosno uredbama, pravilnicima. Predmet rada je analiza normativnih rešenja zaštite vazduha (ambijentalnog) prema pravu Republike Srbije i uticaj bitnih faktora na zagađenost vazduha.

***Ključne reči**: kvalitetan vazduh, zagađenje vazduha, životna sredina, uzroci zagađenosti vazduha u Republici Srbiji.*

References

1. Besermenji, S. (2017). Zagađivanje vazduha u Srbiji. [Air pollution in Serbia]. *Journal of the Geographical Institute" Jovan Cvijic", SASA*, (57), pp. 495–501
2. Bogdanović, S., Marjanović, P. & Pilipović, M. (1993). *Životna sredina – institucionalni okviri i nove tendencije u politici zaštite* [*Environment - institutional frameworks and new tendencies in protection policy*]. Beograd: Savezno ministarstvo za životnu sredinu : Ekonomski institut : Priroda
3. Vig, Z. & Gajinov, T. (2011). *Stanje i perspektive ekološkopravne regulative u Srbiji* [*State and perspectives of environmental legislation in Serbia*]. Novi Sad: Fakultet za evropske oravno-političke studije
4. Đorđević, M. (2019). Zagađivanje i zaštita vode, vazduha, zemljišta i hrane [Pollution and protection of air, water and soil]. In: *Zbornik radova: Peti naučno-stručni skup Politehnika* [*Proceedings: Fifth Scientific and Professional Conference Polytechnic*] (pp. 193–197) Beograd: Beogradska politehnika
5. Đarmati, Š. (2007). *Zagađenje i zaštita vazduha* [*Air pollution and protection*]. Beograd: Beogradska politehnika - visoka škola strukovnih studija
6. Marković, S. & Ditrih, S. (2018). Pravna zaštita voda u Republici Srbiji [Legal protection of water in the Republic of Serbia]. *Pravo – teorija i praksa 35* (7-9), pp. 15–28
7. Mišković, D. (2011). *Upravljanje i zaštita životne sredine Evropske unije* [*European Union environmental management and protection*]. Novi Sad: Fakultet za ekonomiju i inženjerski menadžment u Novom Sadu

8. Pejić, B. (2015). Zagađenje vazduha kao determinanta ekološke bezbednosti Srbije [Air pollution as a determinant of Serbia's environmental security]. *Zbornik radova Geografskog fakulteta Univerziteta u Beogradu*, *63*, pp. 1–30.
9. Stevanović, B. (2003). *Enciklopedija životne sredine i održivi razvoj* [*Encyclopedia of Environment and Sustainable Development*]. Beograd: Ekolibri; Zavod za udžbenike i nastavna sredstva Srpsko Sarajevo
10. Todić, D. & Dujić, I. (2020). „Kvalitet vazduha" u propisima Republike Srbije i Evropske unije (od nejasne definicije do složenog sistema zaštite vazduha) ["Air quality" in the regulations of the republic of Serbia and the European union (from the unclear definition to a complex air protection system)]. *Zbornik radova Pravnog fakulteta u Nišu, 59* (87), pp. 37–54
11. Strategija za primenu Konvencije o dostupnosti informacija, učešću javnosti u donošenju odluka i pravu na pravnu zaštitu u pitanjima životne sredine – Arhuska konvencija [Strategy for the implementation of the Convention on Access to Information, Public Participation in Decision-Making and the Right to Legal Protection in Environmental Matters - Aarhus Convention]. *Službeni glasnik RS*, br. 103/11
12. Zakon o zaštiti životne sredine [Law on Environmental Protection]. *Službeni glasnik RS*, br. 135/04, 36/09, 36/09 - dr. zakon, 72/09 - dr. zakon, 43/11 - odluka US, 14/16, 76/18, 95/18 - dr. zakon i 95/18 - dr. zakon
13. Zakon o zaštiti vazduha [Law on Air Protection]. *Službeni glasnik RS*, br. 36/09, 10/13 i 26/21 - dr. zakon
14. Zakon o obligacionim odnosima [Law on Obligations]. *Službeni list SFRJ*, br. 29/78, 39/85, 45/89 - odluka USJ i 57/89, *Službeni list SRJ*, br. 31/93, *Službeni list SCG*, br. 1/03 - Ustavna povelja i *Službeni glasnik RS*, br. 18/20
15. Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, *Official Journal of the European Union*, L 152. 11.6.2008
16. Uredba o uslovima za monitoring i zahtevima kvaliteta vazduha [Decree on Conditions for Monitoring and Air Quality Requirements]. *Službeni glasnik RS*, br, 11/10, 75/10 i 63/13
17. Pravilnik o graničnim vrednostima emisije, načinu i rokovima merenja i evidentiranja podataka [Ordinance on emission limit values, manner and deadlines for recording data]. *Službeni glasnik,* br. 30/97 i 35/97 – ispr.

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A HISTORICAL – LEGAL REVIEW OF HAMMURABI'S CODE

ABSTRACT: Hammurabi's code shows the social relations of that time, although most of these relations were regulated by the Law of Contract. The Code covers a variety of legal matters: it regulates very complex property, family, obligatory and criminal-legal relations including the judiciary provisions. The Code expresses the class character of the society, because it primarily protects the interests of the ruling class and punishes the members of the ruling and subordinate classes differently for the same crimes. The Code was carved in a stone pillar and it was found by M. Morgan in 1901. This masterpiece of a human's thought, almost four millennia old, was engraved in the stone of Babylon (Hammurabi) for the temple of Sippar (now the ruins of Abu Dhabi near Baghdad). An undamaged inscription of the Code is kept in the British Museum.

Keywords: *Hammurabi, Babylonia, Sumerian-Akkadian period, Assyrian period, New Babylonian period.*

1. Introduction

I believe that the presentation of Hammurabi's law, as the oldest preserved written text of legal regulations, will arouse the interest, not only of lawyers but also of all those from other scientific disciplines. It is certain that there are researchers who are interested in the legal regulation of relations in the human community, through three or more millennia of development of

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human society. Hammurabi is considered to be the king of the first Babylonian dynasty (around 1792-1750 BC) and one of the most important figures of the Ancient East and human civilization in general. He is the creator of the Old Babylonian Empire. He united the Semites and Sumerians into one powerful state that included Mesopotamia and Assyria. In that common state (ruled militarily and administratively), the culture of those two nations was united in the so-called Babylonian civilization that will exist for almost two millennia (The Encyclopedia of War, 1972, p. 390).

Hammurabi was not only a great statesman, but also a great builder of cities, canals, bridges, fortifications, etc. He fortified the cities of Babylon and Sippar (Sippar-Abu Haba) as well as numerous fortifications. Of course, like many events from the past or archeological findings, for us they are still covered with a veil of mysteries and secrets, because official scientific explanations suffer great public criticism. There are numerous requests for reconsideration of official scientific views on past events, which is especially evident through electronic media, which are becoming an influential factor in the field of information.

"The Old Babylonian Code ("Hammurabi's Code" was found in Susa in 1901 (Iran), during archeological excavations. It is written in cuneiform and carved in stone ("to last forever"). It is believed that it had 282 laws and regulated various legal matters, wich we will try to clarify in more detail. . The stone pillar is 2.25 m high, and the circumference of its base is 1.90 m" (Jasić, 1968, p. 36).

Hammurabi is shown on a stone monument receiving a code from the Sun God. The monument was brought to Baghdad around 1120 BC, as a war trophy, and today the remains of the code are preserved in the British Museum (Ignjatović, 2012, pp. 55–70).

Due to the interest of young researchers, we present the scientific views of several authors (referring to numerous scientific sources), who claim that the territory of the Ancient East, at the time mentioned, was visited and militarily occupied by ancestors of Serbs (Deretić & Antić, 2017, pp. 159–361).

Such a short introduction showed numerous dilemmas about the topic of our work, so we will try to explain the historical factors, as well as the socio-economic relations of Babylonia.

2. Antic Babylonia

"Babylonia is a state of the Ancient East that stretched over the area of today's Iraq, Iran, Yemen, Syria, etc., and historians call it after the capital Babylon. The name of the city, in translation, means "God's Gate" (Bab-ily). Babylon was the economic, cultural and religious center of all of West Asia and

parts of the African continent. The city of Babylon stretched on both banks of the Euphrates River. With fortifications, it covered over 12 km^2. The outer walls were surrounded by water. The canal was 14 km long and 7.10 m wide. There were 360 one-story towers in the city, at a distance of 42.5 m. There were also eight bronze gates, on the routes of the main roads. In addition to the palace, temple and other buildings in the city, the Tower of Babel (El-temen-an-ki) was built, 91.5 m high (The Encyclopedia of War, 1972, p. 390).

Throughout history, the city has been destroyed several times, and it seems that was only spared from the great conqueror Alexander Macedonian (Alexander the Great). After all, you can read more about that in the book "Ancient empires" by Jovan Deretić and Dragoljub P. Antić, who used extensive historical material and extensive professional literature.

For us Serbs (as well as other nations of Southeast and Eastern Europe), Babylon arouses scientific curiosity and has some special significance because Alexander the Great "Macedonian" died in it (probably poisoned).

The history of Babylonia is divided, usually into: Sumerian-Akkadian period (V-III millennium BC), Amorite (around 1850-1750 BC), Cassite period (around 1750-1500 BC), the Assyrian period, continues from the end of the second millennium to the middle of the first millennium, and then follows the New Babylonian period. It should consider that such a summary of Babylonia is not complete because there were certainly revolts and uprisings, i.e. liberation or enslavement-occupation of certain territories (Krstinić & Vasiljković, 2019, pp. 1–14).

The aim of the paper is not a complete historical study, or even a detailed presentation of that state formation. Displayed details are only a guide for easier observation and study, primarily of young researchers. The New Babylonian period arose after the division of the Assyrian Empire, because after independence it fell under the rule of Persia. The Persian ruler Xerxes destroyed the city of Babylon, which despite the destruction remains the cultural capital of that geographical area. The following presentation will be dedicated to the text of the Hammurabi Code, noting that every legal provision we process shows the socio-economic relations of that time. The Code was written in stone, so there could be no amendments, and the property provisions show that there was no inflation or debt consolidation at that time.

I note in particular that the presentation of the history of Babylonia was done with respect for the principles of official historical science, but it should be borne in mind that science has not yet harmonized views on the existence and evolution of some nations such as Sumerians, Semites, Amorites, Scythians, Getae, Macedonians and others.

3. Hammurabi's Code

The Old Babylonian Code is named after the ruler Hammurabi, whose face was carved in stone (as he receives earthly laws from the god Shamash). It is considered that it had 282 rules, because from the rule 65, one fortieth of the rules have not been preserved. The law was drafted as a constitutive act ("Constitution"), and regulates various legal matters: it regulates complex property relations, family relations, obligations, criminal-legal relations, and contains provisions on the judiciary and the army. Let's try to present and analyze these provisions, following the order as done by law (Jasić, 1968).

a) Military provisions

There are two types of conscripts in the law, classified by size of possession. The Code does not allow the replacement of a conscript with another person, even if the manager (Governor) of a certain area allows it, obviously in order to preserve the quality of the army.

The Temple and the Court are ordered to redeem the captured conscript, as well as to return his property if it was given to someone else to use. Provisions on inheriting military property regulate the continuity of family obligations, so that military property is inherited from father to son. The military property is well protected from usurpation and abuse (it cannot be confiscated or sold), in order to preserve the land fund for the purpose of mobilization and activation of the army. Conscripts are protected from the arbitrariness of administrative officials. For example, rule 26 stipulates that if an official or soldier who is ordered to go on the king's battle did not leave, and even if he hired someone, that someone left instead of him, that is. replaced him, he deserves death, and his property will be inherited by the person who replaced him.

b) Basic provisions of the Code

In modern legal texts, the basic provisions are the introductory and most important provisions that maintain the purpose of the law. When it comes to the Hammurabi Code, probably the first rules of the law are short and clear, and they regulated the most common delinquent behaviors, and thus the most socially harmful-dangerous behaviors. Rule 1. prescribes: "If a man brings an accusation against another man, charging him with murder, but cannot prove it, the accuser shall be put to death".

The next rule shows the religious prejudices of that time, because it prescribes: "If a man has accused another of laying a spell upon him, but has not proved it, the accused shall go to the sacred river, he shall plunge into the

sacred river, and if the sacred river shall conquer him, he that accused him shall take possession of his house. If the sacred river shall show his innocence and he is saved, his accuser shall be put to death."

Rule 3 prescribes the death penalty for perjury, in case that the death penalty was prescribed for the act the person testified.

A judge who reversed his verdict was stripped of his judicial title.

The death penalty was also provided for the theft of a court's or temple's (God's) treasure, and the same punishment followed for the one who received those stolen items. The same punishment followed for buying without a contract or a witness, not only material goods but also slaves or animals (Rule 7).

The class dichotomy of society was reflected in the provisions that differently treated and regulated the property of the court or the "man" (probably the lord). The thief compensates thirtyfold for the property of the court or the temple, and tenfold the property of the "men" (Rule 8).

It is obvious that such severe punishments had reasons and justification, no matter how it seems to us today. Practically from Rules 9-13. it is prescribed that possession of another's property without a contract or witness "deserves death".

The death penalty was threatened by false witnesses in property disputes. The death penalty was threatened (Rules 14-16) for stealing a male child or "taking" a slave out of the court or "a man".

Theft and robbery were punishable by death (Rules 21-24), and the injured party was compensated by the regional sheikh or the city in case the perpetrator was not identified.

The provision of Rule 36 is still relevant today, at the time of "court executions", and reads:

"The field, garden, and house of a chieftain, soldier, or assets given as a reward, can not be sold".

c) Property law provisions

Ownership of property and disposal of property is enabled by Rule 39 of the Law. The law also regulated the relationship between turnover and lease of property.

The provision of Rule. 44 which regulates the lease of land that was not arable in order to be converted into arable land. If the buyer does not do that within the agreed deadline, he will have to do so (after the expiration of the agreed deadline), as well as pay the fine to the owner "10 gur of grain on 10 gan area". Conditions of damage caused by force majeure were also foreseen, such as due to flood or drought. The provision of Rule 51, which

regulates the position of the debtor towards the creditor for the borrowed money, is interesting, that if there is no money to return, he will hand over the grain instead of the money, as determined by the royal tariff. With a free interpretation, I conclude that there were no usurers at that time.

The negligence of the damage was also regulated, so that if someone allowed the irrigation canal that he maintained to cause damage (e.g. to the city), and could not compensate the damage, the city could sell him and the property, and share the redemption price. (Rule 54)". It was similarly arranged for grazing the herd without the permission of the landowner: "he was obliged to give the landowner to harvest from his property" and on top of that 20 gur of grain on every 10 gak of the area" (Rule 57).

The provisions of Rules 58-65 of the law show the obligation of the owner of land, forest, pasture or orchard to have to "manage as a good host", i.e. to take care of the property in an exemplary manner. It is obvious that land property was also considered a common good. The provisions of Rules 65-99 were not preserved. Existing trade relations can be seen from the provisions of Rules 100-115 A broader interpretation shows that the trade was unhindered, and the relations between the contracting parties were provided by law. The law also regulated the relations between intermediaries and trade assistants. Here is an example from Rule 105 "If the agent is careless and does not take a receipt for the money which he has given to the merchant, the money not receipted for shall not be placed to his account". So, almost 4000 years ago, it was known how to prevent the illegal acquisition of property, i.e. it had to have the origin of money. It can be said with certainty that the rights and obligations were regulated by that time. Thus, Rule 110 provides: "If a priestess who is not living in a convent opens a wine shop or enters a wine shop for a drink, they shall burn that woman.

Other property relations were also regulated, such as service, pledge, debt slavery, etc. For example (Rule 117), the debtor could pledge family members (wife, son, daughter) while the debt lasts, but the legislator limited such debt bondage so that it could not last longer than three years.

The forced execution of the debt was regulated in such a way that if the abuser died in the house of the one who exercised coercion over him, and it is the son of a free man, he was paid "one third of the silver line and was deprived of what he lent". The law enabled the possession of slaves, and it is obvious that they had a legal position in the trade.

At that time, there was also warehousing of goods as a legal concept, so the provisions of Rules 120-123 regulated that issue, which means that there was a storage contract, the storekeeper's obligations to keep goods, payment

of compensation for stored goods, such as grain, etc. Rule 127 regulates the issue of compensation for insult or defamation, so that the one who slanders someone's wife or priest, "his forehead will be stamped".

d) Family relationships

Marital relations are also regulated by the Code, and Rule 128 stipulates that "If someone marries and has not determined the obligations of his wife, she is not considered married."

Adultery was severely punished, e.g. if a woman is caught in bed with another man, she will be tied up and thrown into the water, provided that if the husband does not allow the wife and the king to a servant to live. A man "deserved death" if it was found that he dishonored an unmarried girl.

The wife was not allowed to remarry, i.e. "go to another house if there is something to eat in the husband's house". If she left because "she did not take care of her body", i.e. she went to another house, she was tried, and then she was thrown into the water (Rule 133).

Upon their return from captivity, the prisoners of war found a wife who lived in someone else's house, because she had nothing to eat in her own house. In that case, the returnee took the wife back, and if she had sons from the relationship with both of them, each of them took them. "They followed their father" (Rule 135).

The concubines who gave birth to children were protected so that the man could not drive them away "until they raise the children".

The issue of dowry was regulated by Rules 137-139, and the issue of divorce by Rules 140-142. The law regulates the discriminatory status of a woman who has given birth and woman who have not given birth, so the law deprived women who did not give birth to children so that they could bring a concubine to give birth to a child, in which case the husband could not expel such a woman.

The wife could leave the house and return to her parents, and the husband was obliged to return part of the dowry from his father. She could not give the gift that the wife received from her husband to anyone, except to one of her children.

"If a man's wife, for the sake of another, has caused her husband to be killed, that woman shall be impaled"(Rule 153).

"If a man has committed incest with his daughter, that man shall be banished from the city" (Rule 154).

Sexual intercourse between mother and son was punished by mutual burning (Rule 157).

Sexual intercourse with the stepmother who gave birth to children with his father, lead to expulsion of criminal and expulsion from the father's home.

The dowry that the wife brings from the father is inherited by the children after her death, and if there are no children, then the husband returns the dowry to her father.

e) Inheritance law

The right to inherit existed at that time and was regulated in great detail. The father's property was divided between the sons into equal parts. Also, the existence of the so-called Necessary act (the notion of modern legislation), i.e. the father could not renounce the child and deprive him of his inheritance "if the child is not charged with a serious crime". Children with a slave whom the father recognized as his own participate equally in the division of the inheritance with children born in marriage. If the father did not admit during his life, that is said to the children of the slave "You are my children", after father's death they did not participate in the division of property, but were released from slavery.

The status of slavery was provided by law if there was a relationship between the daughter of a free man and a slave, the master of the slave could not demand that the children of the daughter of a free man be slaves.

A widow with small children could enter another man's house, only in the presence of a judge who lists the property of the previous husband, and it is kept for his children.

The law singled out female children who were priestesses or public women (in modern language - prostitutes).

The two mentioned categories were separated, i.e. they acquired a dowry at the request of their father, who was able to allow them to dispose of their property freely (Rules 178 and 179).

The daughter "loner" (unmarried) or a public woman who did not receive a dowry could live in her father's house and use the property, "and after her death it belongs to her brothers".

There was a category of child adoption.

It was provided so called full adoption, i.e. the child who adopter raised could not be sought back, i.e. seek annulment of adoption.

Similar provisions applied to children who were adopted and trained as craftsmen.

"If a son of a paramour or a prostitute say to his adoptive father or mother: 'You are not my father, or my mother,' his tongue shall be cut off" (Rule 192).

"If a child hits his father, his hands will be cut off" (Rule 195).

The principle of retaliation existed and was applied reciprocally. So, if someone breaks the hand of a free man, the hand of the perpetrator will be broken.

I note that the class character of the law is visible, because free people were more protected than slaves (Janković & Mirković,1997. p. 9). Punishments for the abuse of slaves were provided, such as if someone slaps a slave of a free man, his ear is cut off (Rule 205), and for slapping a free man of the same social position "He will be paid with silver".

Property fines were provided for physical attacks on free citizens, and especially high fines were provided for quackery or wrong treatment by doctors (Rules 215–227).

These provisions also contain similar property penalties for veterinarians.

f) Other provisions

The provisions of Rules 228–282 (Rule 262 has not been preserved) regulate various relations, and these provisions indicate that economic life was developed at that time.

Let's pay attention to the provisions that regulate the construction of houses. A contractor who does not carry out construction work properly, so the owner of the house dies because the house collapsed on him, the contractor is punished by death (Rule 229) (Slavnić, 2008, pp. 91–100).

"If it kills the son of the owner the son of that builder shall be put to death".

Compensation for damage to unprofessional and low-quality construction works was also envisaged. If there were no fatal consequences, restitution of the damage included compensation for the complete damage and the construction of a new house.

The provisions of Rules 234–240 regulate shipbuilding, renting ships, transporting goods and passengers, as well as compensation for their damage.

These provisions also prescribe the amount of damages that could not be reduced arbitrarily even by the judge.

Obviously, at that time, agriculture was the most important, (Danilović & Stanojević, 1987, p. 11) because the Code (Rules 241–273), regulated the obligation to cultivate the land, renting land, as well as using and renting livestock to cultivate the land.

The law provided a value (usually grain) for renting oxen, donkeys or slaves.

The legislator also protected cattle breeders, as well as damages that happened or could happen due to the theft of cattle, field damage caused by cattle, and shepherds, etc.

Wage earners were paid for their work per day ("5 silver sheaves" – Rule 273 (Danilović & Stanojević, 1987, p. 9). The provisions of Rule 274 show that craft was developed, and for craftsmen (bricklayers, tailors, carpenters) the compensation per day was also determined by law. Obviously, the trade was also expressed because (Rules 275–277) the prices for renting scaffolding, sailing ships, etc. were determined by law. Rules 278–282 stipulate the slave trade, both for slaves in the country and for those who have fled, bought abroad.

4. Concluding remarks

Writing this text and thinking about the text of the law, there is little to say if it is said that the Code of Hammurabi is a jewel for lawyers and historians, as well as for all researchers of the ancient past. It is a real miracle that nothing more has been done to popularize the Hammurabi's Code. For example, the text of the code was first translated into Serbian less than 100 years ago. (1925), and since then it has only been mentioned in the history of law.

The Law was published and made available on Wikipedia, but more complete works with a historical understanding of that time have not appeared yet.

Of course, this mild criticism was directed not only at lawyers but also at historians, archaeologists, linguists, art historians and even economists, because at that time economic relations were conducted according to the rules written in stone. When we say inscribed in stone, it means that those provisions could not be changed, and those who applied the law (judges), determined only the factual situation, while the law resolved the merits of the disputed relationship.

All of us who read this text must admire the purity of language and the clarity of legal norms. We believe that future researchers will find a connection between our great-great-grandparents and this code. The idea of this kind was created for me by reading the legal rules of Saint Sava and Dušan's Code. It is unbelievable how many similarities there are between these three codes, and if it was not possible to know, in the time of Saint Sava or in the time of Emperor Dušan, to know about the existence of Hammurabi's Code.

It is emphasized that some discriminatory provisions concerning women, such as stoning for adultery, have been maintained until today as a common and positive right in the geographical area from which the Hammurabi Code originates.

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ISTORIJSKOPRAVNI PRIKAZ HAMURABIJEVOG ZAKONIKA

REZIME: Hamurabijev zakonik prikazuje društvene odnose iz tog vremena, iako je veći deo ovih odnosa bio regulisan obligacionim pravom. Zakonik obuhvata raznovrsnu pravnu materiju: reguliše veoma složene svojinske, porodične, obligacione i krivično-pravne odnose, a sadrži odredbe o sudstvu. U Zakoniku je izražen klasni karakter društva, jer u prvom redu štiti interese vladajuće klase, a za ista krivična dela različito kažnjava pripadnike vladajuće klase i potčinjene klase. Zakonik je uklesan u kamenom stubu a pronašao ga je M. Morgan 1901 godine. To remek delo ljudske misli, staro skoro četiri milenijuma, urezao je u kamenu Vavilona (Hamurabi) za hram Sipar (sada ruševina Abu Dhabi kod Bagdada). Neoštećeni natpis Zakonika čuva se u Britanskom muzeju.

Ključne reči: *Hamurabi, Vavilonija, Sumersko-Akadski period, Asirski period, Novovavilonski period.*

References

1. Danilović J. & Stanojević, O. (1987). *Tekstovi rimskog prava: beleška Marija Torcija Katona Starijeg (234.-139. g.p.n.e.*) [*Texts of Roman law, Note of Marcus Porcius Cato the Elder (234-139 BC)*]. Beograd: Službeni list
2. Deretić, J. & Antić, D. (2017). *Istorija Srba i Rusa: knj. 2: drevna carstva* [*History of Serbs and Russians: book two: ancient empires*]. Beograd: Ganeša klub
3. *Vojna enciklopedija tom 10* (1972). [*Encyclopedia of War*]. Beograd: Vojnoizdavački zavod
4. Ignjatović, M. (2012). Rimsko pravo i njegov trajni karakter – uticaj rimskog prava na savremeno pravo [Roman law and its lasting character – the influence of Roman law on contemporary law]. *Pravo – teorija i praksa, 29* (7-9), pp. 55–70

5. Janković, D. & Mirković, M. (1997). *Državnopravna istorija Jugoslavije* [*State and legal history of Yugoslavia*], Beograd: "Draganić"
6. Jasić. S. (1968). *Zakoni Starog i Srednjeg veka* [*Laws of the Ancient and Middle Ages*]. Beograd: Budućnost
7. Krstinić, D. & Vasiljković, J. (2019). Prve građanske i krivične kodifikacije [The first civil and criminal codifications]. *Pravo – teorija i praksa, 36* (4-6), pp. 1–14, DOI:10.5937/ptp1904001K
8. Slavnić, L. (2008). *Istorija pravnih institucija* [*History of legal institutions*]. Novi Sad: Pravni fakultet za privredu i pravosuđe

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LEGISLATIVE REGIME OF THE CONTROL FUNCTION OF THE NATIONAL BANK OF SERBIA OVER COMMERCIAL BANKS

ABSTRACT: The existence of a central bank in one country is of a great importance, because the central bank controls the functioning of the financial market and its participants (banks, insurance companies, financial leasing companies, payment institutions, voluntary pension fund management companies and exchange offices), striving to comply with the law on the National Bank of Serbia in achieving the goals that are clearly and precisely defined. It achieves its goals by performing the intended functions. One of the functions performed by the NBS is reflected in the control of banks, which is the topic of this paper. The control function of the NBS is defined by both the Law on the National Bank of Serbia and the Law on Banks. The NBS performs the function of controlling banks in the process of establishing a bank, but also in the course of its operations. The process of establishing a bank, as the most important financial institution, is far more complex. The complexity of this procedure is reflected in the fact that the legislator has forseen the procedure of obtaining preliminary approval and then obtaining a work permit. After holding the founding assembly of the bank and obtaining the obligatory consent, the bank can be registered. The control function is also represented in the fact that the bank has the obligation to submit regular and extraordinary reports

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to the National Bank. In this way, the NBS protects the financial market of Republic of Serbia from instability and crises that can cause illiquid, uncertain and illegal operations of banks.

Keywords**:** *The National Bank of Serbia, the NBS, central bank, banks control.*

1. Introduction

The significance of the existence of one bank as central in the state is great, because it controls the operations of all financial institutions that operate on the territory of one state and thus strives to achieve the set goals. According to the Constitution of the Republic of Serbia, the National Bank of Serbia[1] is the central bank in RS. As Šojić and Hinić, (2014) state: "The first central bank was established in 1883 under the name of the Privileged National Bank of the Kingdom of Serbia. In accordance with the changes in the name of the state and its organization, the National Bank has changed its name several times. Throughout its long history, the National Bank has operated in a variety of economic, social and international circumstances, including war events, trade, economic and financial sanctions, hyperinflation (1993-24 January 1994) and a variety of domestic and international political circumstances" (p. 146). The main goal of the NBS, which is defined by law, is to achieve and maintain price stability (Law on the National Bank of Serbia, 2003). Achieving this goal contributes to creating a favourable climate for economic growth and development within the country, and thus affects the raising of citizens' standards and raising their purchasing power. The success of achieving the goals of the economic policy of the state, maintaining the stability of the banking system and protecting the interests of all participants in the financial market are the basic policies of the central bank based on its regulatory and control functions (Carić, Vitez, Dukić Mijatović & Veselinović, 2016, p. 109). The regulatory function of the NBS includes primarily performing activities related to the issuance of money and loans, performing activities for the account of the state as well as maintaining external liquidity, while the control function includes control activities performed by the NBS over financial market participants. In addition to the basic goal, ie achieving and maintaining price stability, the law defines two more goals which the NBS can approach only if it does not jeopardize the fulfilment of the first goal. In

[1] Hereinafter referred to as the NBS

order to achieve its goals, the National Bank performs a number of functions determined by law.[2]

The law stipulates that the NBS performs its control function in relation to banks in the process of issuing a work permit, but also later in the course of its operations. The aim of this control is reflected in the need to protect the financial market from insecure and liquidated legal entities, in order to prevent any instability in the financial market that could lead to a crisis. Due to the fact that the banking system is very important in the monetary and economic life of a

[2] The National Bank of Serbia determines and implements monetary and foreign exchange policy; manages foreign exchange reserves; determines and implements, within its competence, activities and measures for the purpose of preserving and strengthening the stability of the financial system; issues banknotes and coins and manages cash flows; regulates, controls and promotes the smooth functioning of payment operations in the country and abroad, in accordance with the law; issues and revokes operating licenses to banks, controls the solvency and legality of banks' operations and performs other activities, in accordance with the law governing banks; issues and revokes licenses for performing insurance activities, controls this activity, ie supervises its performance, issues and revokes authorizations for performing certain activities from the insurance business and performs other activities, in accordance with the law governing insurance; issues and revokes licenses for performing financial leasing activities, supervises the performance of these activities and performs other activities, in accordance with the law governing financial leasing; issues and revokes licenses and licenses for management of voluntary pension funds to companies for management of these pension funds, supervises this activity and performs other activities, in accordance with the law governing voluntary pension funds; issues and revokes payment institutions for the provision of payment services, and electronic money institutions licenses for the issuance of electronic money, supervises the provision of payment services and the issuance of electronic money, and performs other tasks, in accordance with the law governing payment services; performs activities of protection of the rights and interests of service users provided by banks, insurance companies, financial leasing providers, voluntary pension fund management companies, payment service providers and electronic money issuers, in accordance with the law; determines the fulfillment of conditions for initiating restructuring procedures of banks, ie members of the banking group and implements these procedures, decides on instruments and measures to be taken in restructuring and performs other tasks related to bank restructuring, in accordance with the law governing banks; issues and revokes payment system operators licenses for the operation of this system, supervises their operations and performs other tasks, in accordance with the law governing payment services; issues and revokes authorizations for performing foreign exchange operations, controls foreign exchange and foreign exchange operations and performs other operations, in accordance with the law governing foreign exchange operations; performs tasks determined by law, ie contract for the Republic of Serbia, without endangering the independence and autonomy referred to in Article 2 of this Law; performs other tasks within its competence, in accordance with the law.

country, the state strives to protect this system in the best possible way and ensure its smooth functioning, through strict control over the establishment and operation of the bank itself. As a legal entity that deals with deposit and credit operations (which distinguishes it from other companies), it must operate in a liquid and legal manner, and for that it is necessary to have an institution that will control its operations, which control according to our positive legislation by the NBS.

The effect of central bank control is best seen in the economic systems of countries in transition. In transition economies, the functioning of the banking system is very significant because the capital market is still in its infancy, so the basic functions in terms of capital allocation and monitoring are related to it (Bjekić, 2006, p. 35). The very fact that the functioning of modern economies requires adequate functioning of the banking system, the state is obliged to provide the necessary control, in order to prevent instability in the financial market and ensure the development of the economic system.

2. Control function of the National Bank of Serbia according to the Law on the National Bank of Serbia

The National Bank of Serbia represents the central bank in RS, which is defined as such in the third part of the Constitution, entitled "Economic organization and public finances", which the constitution-maker pointed out its importance. The NBS is a central bank, it is independent in its work, and it is subject to the supervision of the National Assembly, to which it is responsible for its work. It is headed by a governor, elected by the National Assembly (The Constitution of the Republic of Serbia, 2006). Central or the issuing bank is a specific banking institution of the monetary system that is usually under great supervision (control) and influence of the state (Vunjak & Kovačević, 2006). The control and influence of the state is reflected primarily in the fact that the NBS is responsible for its work to the National Assembly, and is obliged to submit reports on its work. Also, all NBS officials (governor, vice-governor, council members) are elected by the National Assembly, they are obliged to submit reports on their work to the National Assembly. The organization, functions and powers of the National Bank of Serbia shall be regulated by the Law on the National Bank of Serbia.[3]

[3] The Law on the National Bank of Serbia was passed in 2003, but it was amended several times in order to better harmonize with the laws of the European Union, bearing in mind that RS is in the process of joining the European Union and has an obligation to adjust its internal legislation. EU legislation. In this part as well, which concerns the NBS, it was necessary to approach certain amendments in order to harmonize our law with EU law as quickly and better as possible.

As already mentioned, achieving and maintaining price stability is the main goal of the NBS, but the legislator has set two more goals. By fulfilling the basic goal, which the NBS strives for, the stability of monetary policy is achieved, but also the stimulation of economic growth within the countries. The second goal is to preserve and strengthen the financial system of the state, which seeks to prevent the occurrence of inflation in the financial market, while the third goal is to implement the economic policy of the RS Government. The government conducts economic policy in such a way as to ensure economic growth and development, but also contributes to the strengthening and preservation of the financial market. When implementing the Government's policy, the NBS takes into account that the goals set by the Government, ie the tasks entrusted to it in the process of implementing the Government's economic policy, do not jeopardize the achievement of the first two goals.

The NBS, as the central bank, performs its regulatory function over financial market participants. Financial market participants include banks, insurance companies, financial leasing companies, voluntary pension fund management companies, payment institutions and exchange offices. In order to ensure the stability of the financial market, the NBS controls the work of these institutions primarily during their establishment, during their operations and finally during the termination of financial institutions. In this paper, the control function of the NBS will be focused only on banks as the most important financial institutions. The bank[4] is a legal entity established exclusively in the form of a joint stock company. A joint stock company as a company whose share capital is divided into shares held by one or more shareholders who are not liable for the company's obligations, except in the case referred on a breach of legal personality. A joint stock company is liable for its obligations with all its assets (The Companies Act, 2011). In order for an organization to operate on the territory of the Republic of Serbia, as a bank, it is necessary to be established in the form of a joint stock company, and to have a work permit issued by the NBS. Already in this procedure (issuance of a work permit), we can see a part of the control

[4] The term Bank comes from the Latin word "banco" which means bench (counter, in today's sense of the counter). The first modern bank, the Bank of Saint George (Casa di Sant Giorgio) was founded in 1407 in Genoa, Italy. Banking also existed in the time of ancient Babylon, Egypt, and Rome. It could be said that banking is as old as history. In the Middle Ages, when taking interest was marked as a mortal sin, people were forced to do this work secretly, away from the public eye, and primarily in Italy, money changers did this work on a bench, (in Italian "banco"), whence the name Bank.

function performed by the NBS over the bank that is being established. The bank must have its headquarters in the territory of RS, and in order to operate as a bank it must have a license to perform deposit and credit operations. Only a bank can perform deposit operations, credit operations and payment card issuance operations. In addition to these tasks, the bank performs many other tasks determined by the Law on Banks.

From banks that are established and registered in RS (so-called domestic banks) in accordance with domestic positive legislation, we also distinguish foreign banks. The Law on Banks defines the term foreign bank as follows: "A foreign bank is a legal entity with its registered office outside the Republic of Serbia which, in accordance with the regulations of the country of origin, is established and registered as a bank. bodies of that state and which perform deposit and credit operations" (Law on Banks, 2005). In order for a foreign bank to operate on the territory of RS, it must have a consent issued by the NBS. In order to obtain consent and register in the register of economic entities in accordance with the law, a foreign commercial bank must submit a handful of documents with a written request, and in order to comply with its other goal, ie preserving and strengthening the state financial system, the NBS could make a decision on giving consent or rejecting the request for giving consent. First of all, the foreign bank must submit a certificate issued by the regulatory body of the country of origin that the foreign bank has a license to operate, but also a permit to open a representative office in RS, then all information about the bank (business name, seat and status of the bank), a copy acts, data on the financial condition of the foreign bank, the decision on the appointment of the person responsible for the work of the representative office, a proposal of the name under which the foreign bank will operate, as well as the seat where the representative office of the foreign bank will be located and data on the management of the representative office. In addition to the above, it is necessary to have a certified statement of a foreign bank confirming that it assumes all obligations arising from the operations of the representative office (Law on Banks, 2005). If the foreign bank does not submit all the stated data, the NBS will refuse to issue a consent to the foreign bank for opening a representative office on the territory of the Republic of Serbia. Here, too, we can see part of the control function performed by the NBS in its work, all with the aim of protecting the stability of the financial market, the state and citizens from illiquid banks.

3. Establishment of a bank and the role of the National Bank of Serbia in establishing a bank

Given that the bank is one of the most important institutions of the financial market, the process of establishing a bank is a bit more complex. Namely, the Bank Law is applied to the procedure of founding a bank, but also the Law on Companies in the part related to the establishment of a joint stock company.[5]

The Law on Banks provides for the existence of a procedure for issuing a preliminary work permit. We could freely call this procedure the previous procedure for obtaining a work permit. With the existence of this procedure, the legislator aimed to show how important the bank is as a participant in the financial market, and that it is necessary to determine in a comprehensive way that the bank can ensure stable, safe and legal operations in order to protect financial market stability.

In order to establish a bank, it is necessary for the founders of the bank, the NBS to submit a request for obtaining preliminary approval for the establishment of the bank. When submitting this request, the founders are obliged to submit the appropriate documentation, but also to pay into the temporary account opened with the NBS the monetary part of the share capital. The founders of the bank must make the founding act of the bank, but also the draft statute of the bank, which the NBS must approve, then submit all information about the founders, their contributions to the bank, as well as the amount of shares they acquire, draft business strategy and policy for the period. of three years, as well as the activity plan for the first year of operation, the proposal of the risk management strategy and the capital management strategy, as well as the proposal of the members of the bank's management and executive board, data on persons who will participate in the bank, provided that the founders are obliged to explain on what basis those persons acquire participation. The founders of the bank are also obliged to submit a statement

[5] One of the important differences between a bank and other companies established in the form of a joint stock company is primarily that the Law on Banks stipulates that the minimum share capital for the establishment of a bank is 10,000,000 Euros, which distinguishes it from other companies. are established in the form of a joint stock company, because the Law on Companies provided for a minimum cash capital in the amount of RSD 3,000,000 for the establishment of a joint stock company. In addition to this fact, the bank differs from other companies established in the form of a joint stock company in relation to the activities it can perform (deposit, credit operations and payment card operations), but also in relation to the establishment procedure, bearing in mind that establishment of a bank provided for the existence of a procedure for obtaining preliminary approval for the establishment of a bank.

confirming that the non-monetary capital will be transferred to the bank's founding capital, provided that the NBS may, if it deems it necessary, request the founder to submit other documents (Law on Banks, 2005). Only after submitting the said documentation, the bank enters the process of obtaining preliminary approval. The deadline for deciding is 90 days from the day of submitting the complete request.

When the bank receives this preliminary work permit, it is obliged to submit all the necessary documentation for obtaining the final work permit within 60 days, because otherwise the obtained preliminary approval ceases to be valid and the founders lose the right to re-apply in the next year. to obtain a work permit. The same rule applies if the National Bank rejects or rejects the request for preliminary approval for any of the reasons provided by law. In order to obtain the final approval for work, it is necessary for the bank, ie. the founders of the bank shall submit a request to the National Bank with the submission of all necessary documentation provided by law (Law on Banks, 2005). If it determines that the bank meets all the conditions, the NBS will issue a decision on issuing a license to the bank, otherwise the request will be rejected.

It performs the control function of the National Bank even after the issuance of the operating license, and until the moment of the bank's registration. When the bank's founders receive a decision on granting a work permit, they are obliged to schedule a founding assembly at which they are obliged to adopt the statute, appoint the president and members of the board and executive board, adopt the bank's business policy and program of activities for three years. the decision to issue the first shares. After the founding assembly is held, all the necessary documents are adopted and the president is elected as a member of the management and executive board, the founders are obliged to submit all the documentation to the NBS again for approval. After obtaining the consent, the consent with the work permit and the remaining necessary documentation that is registered shall be submitted to the register of economic entities.

4. Control function of the National Bank of Serbia according to the Law on Banks

The control function of the NBS is also defined in the Law on Banks. It is reflected in the fact that it is necessary to give consent in case a person wants to acquire ownership in the bank's capital. The consent of the NBS is required for the acquisition of ownership in the bank's capital, which would enable the acquirer 5% or more of the voting rights. Without this consent, no person

can legally acquire the right of ownership in the bank's capital, otherwise he would have to alienate that right, and he would not be able to exercise those rights that he would otherwise have had to possess the consent. Thus, the protective function is manifested, which is reflected in the impossibility of acquiring a significant or controlling interest in the share capital of the bank.

The Bank has the obligation to submit regular reports to the National Bank, but also extraordinary ones if the National Bank requires the submission of such reports. In addition, the bank is obliged to provide access to data and business documentation at any time, whether it is data that is transparent and accessible to the general public, or those that are a business secret. Persons employed in the National Bank are obliged to treat the data obtained during the control over the bank, which represent a business secret of the bank, in the same way.

The NBS can control banks directly and indirectly. By applying any form of control, the NBS actually controls creditworthiness[6] and the legality of the bank's operations. Indirect control is the control performed by the National Bank indirectly, ie on the basis of reports submitted by the bank. The Bank is obliged to submit annual financial reports together with the external auditor's report on the bank's operations for the previous business year, within 120 days from the end of the business year. These reports, as well as extraordinary reports (if any) the bank is obliged to publish on its official website. If it is necessary to additionally check or process some data from the annual report, the NBS may determine that the bank hires an external auditor, who will perform this control. This procedure is called a separate audit of financial statements.

Direct control is the control that is carried out in the business premises of the bank itself. The Bank is obliged to provide direct control persons with direct access to all necessary documents and premises required by authorized persons of the NBS. These persons have the right to access not only the place marked as the seat of the bank, but also all other premises, organizational units, representative offices and branches from which the bank performs its activities.

Direct and indirect control of banking and non-banking financial institutions aims to ensure compliance with established standards in their operations (Golubović, 2016, p. 181). In order to ensure the most efficient and liquid operations of banks, but also to protect clients, countries and financial

[6] The term creditworthiness comes from the Latin word "bonitas" which means good, valuable, quality. Creditworthiness is a formal and material property of a bank that makes it a safe debtor in which funds are invested. Creditworthiness is the ability to pay, the security of a particular claim, or the ability to give and pay loans. In that sense, prudential control includes the control performed by the NBS in order to ensure legal, reliable and safe operation of the bank.

organizations, the European Commission has adopted basic standards in the operation of banks called Basal III. Basel III is a comprehensive set of banking regulatory reform measures developed by the Basel Committee on Banking Supervision to strengthen regulation, supervision and risk management in the banking sector. These measures aim to improve the banking sector's ability to absorb shocks arising from financial and economic stress, regardless of the source, improve risk management, strengthen bank transparency and disclosure. The G20 approved the Basel III agreement in November 2010 and consists of several successive updates (European banking authority).

During its operations, the bank is obliged to hold regular sessions of the bank's assembly, but also extraordinary ones if necessary. Regular sessions of the bank's assembly are held at least once a year. How long the session of the bank's assembly will be during one year, when and how they will be held, the bank determines by its statute. The decision determining the convening of the general meeting of the company also determines the agenda. The Board of Directors of the bank is obliged to inform the National Bank about the date of the session of the bank's assembly, as well as about the agenda. When the NBS deems it necessary, it has the right to request that some other issues be included in the agenda of the Assembly, which the bank is obliged to do. The same rules apply to the holding of extraordinary sessions of the bank's assembly, regardless of whether the request for holding this session was submitted by the NBS, the board of directors or any other body of the bank authorized to convene an extraordinary meeting, whether this request was submitted by the shareholders. In addition to the possibility to include in the agenda the relevant issues that are important for the bank's operations, the NBS has the right to determine the person who will attend the session of the bank's assembly. The representative of the National Bank does not have the right to vote at the assembly, but he has the right to ask questions to shareholders.

In the process of performing control, the NBS has the right to apply appropriate measures in order to eliminate irregularities in the operations of banks, which may endanger the stability of the financial system.

5. Imposition of measures by the National Bank of Serbia in the procedure of bank control

Considering that the law stipulates that the National Bank has the right to impose appropriate measures in the procedure of control over banks, we can conclude that the NBS is entrusted with the performance of certain administrative tasks. Having in mind that the Law on General Administrative

Procedure is applied to the procedure of control of banks, but also other financial institutions, we can conclude that the legislator of the NBS has brought it under the administrative body. Our legal writers, who in administrative-legal theory have considered or only lightly touched on this question of whether the NBS is an administrative body, have conflicting opinions. As Bačanin (2007) points out, "Numerous state and non-state bodies and organizations appear in the legal system of Serbia as executors of administration, where the state administration consists of state administration bodies and special (administrative) organizations, and public administration - state administration bodies and organizations, state non-governmental bodies (Government of the Republic of Serbia, National Assembly of the Republic of Serbia, President of the Republic of Serbia and courts), independent state non-governmental organizations (National Bank of Serbia) and non-state executives (companies, institutions and other non-state organizations, territorial autonomy bodies and local self-government bodies). Only for administrative bodies, performing an administrative function is the basic or main activity. For other executives, the administrative function is a secondary, auxiliary or ancillary activity. The National Bank of Serbia is undoubtedly the executor of the administration "(p. 43). Most of the authors consider the NBS a non-governmental organization, while a smaller number include it in the state apparatus, treating it as a state organization, mostly, or a state body, exceptionally (Bačanin, 2007, p. 44). We are of the opinion that the NBS still represents an administrative body, bearing in mind that it performs part of the administrative function reflected in the authority given to it in the Law on Banks to impose appropriate measures if it finds that there are certain irregularities in the bank's operations financial market.

After the control procedure over the bank, The NBS has the possibility, if it determines that there are irregularities in the bank's operations, to impose appropriate measures. There are three types of measures available: written warning; issuing orders and measures for elimination of irregularities; revocation of the bank's operating license.

When the National Bank determines that there are irregularities in the work of the bank, but they are not such as to endanger the financial condition of the bank, it shall issue a written warning to the bank in which it leaves a deadline to eliminate the deficiencies. If the bank does not eliminate the deficiencies in operations due to which a written warning was issued, the NBS has the right to issue an order or measure, all in order to eliminate irregularities in operations and maintain the bank's financial condition at the level necessary for its safe and legal operations. However, when there are

deficiencies that significantly jeopardize the financial condition of the bank and its future safe and liquid operations, then the NBS has the right to issue to the bank some of the numerous orders and measures prescribed by the Law on Banks. What measure will be imposed on the bank depends on the type and amount of irregularities that were determined in the bank's control procedure.

The strictest measure that the NBS can impose on a bank is the measure of revoking the work permit. The imposition of this measure may occur when it is determined that there are such irregularities in the bank's operations, which have led to the deterioration of the bank's financial condition, and the bank cannot continue with liquid operations due to such irregularities. The reasons for revoking a work permit do not always have to be of a financial nature. The bank's work permit may be revoked if it is determined that the work permit is based on facts that are not true, but even if the bank violates the regulations, the company's members withdraw their roles, the bank does not start performing activities within 60 days from the date of enrolment. register of economic entities, etc. (Law on Banks, 2005).

The purpose of imposing measures is to try to "save" the bank, ie to provide it with further operations with as few losses as possible, but also to preserve stability in the financial market. In that sense, the NBS strives to impose the mildest possible measures, having in mind the irregularities it finds in the bank's control procedure. When it issues measures and orders or when it revokes the bank's work permit, it does so by making a decision. The bank has no right to appeal against this decision, because the decisions of the NBS are final. In any case, the bank may initiate an administrative dispute against the decision in which the court can only determine whether the decision of the National Bank is legal or not, and on the merits it cannot decide because the National Bank is competent for that (Law on Banks, 2005).

6. Conclusion

From all the above, we can conclude that the legislator aimed to show the importance of the bank as a participant in the financial market, bearing in mind that it provided for a far more complex procedure for establishing a bank. The central role in the establishment of the bank is played by the NBS, as the central supervisory body, which controls the entire process of establishing the bank, but also its operations. In that control procedure, it has the discretionary right to impose appropriate measures on the bank in order to ensure liquid and legal operations of the bank and thus protect the stable functioning of the financial market. In the process of establishing a bank,

the central bank performs preventive control in terms of determining the fulfilment of all conditions for the establishment of the bank itself.

After the establishment and registration, and when the bank starts performing its activities, it is obliged to submit regular and extraordinary reports to the National Bank, which prevents performing activities contrary to laws, but also regulations issued by the National Bank of Serbia, and standards and business policy of the bank. When the existence of any irregularities is determined in the control procedure, the National Bank has the right to issue appropriate orders and measures, but also to revoke the work permit in order to prevent any negative consequences on the market. Having in mind that the legislator foresaw far stricter conditions for the establishment, but also the operation of the bank, we can conclude that this was done with the intention to protect the financial market from instability and crises caused by illiquid and illegal operations of the bank. In the procedure he envisaged, the legislator did his best to ensure security in the operations of banks, and to ensure the achievement of the goals of the National Bank of Serbia.

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LEGISLATIVNI REŽIM KONTROLNE FUNKCIJE NARODNE BANKE SRBIJE NAD POSLOVNIM BANKAMA

REZIME: Ogroman je značaj postojanja centralne banke u jednoj državi, jer centralna banka kontroliše funkcionisanje finansijskog tržišta i njegovih učesnika (banke, društva osiguranja, davaoca finansijskog lizinga, platne institucije, društva za upravljanje dobrovoljnim penzijskim fondovima i menjačnica), težeći da, u skladu sa Zakonom o Narodnoj banci Srbije, ostvari ciljeve koji su jasno i precizno definisani. Ciljeve ostvaruje obavljanjem predviđenih funkcija. Jedna od funkcija koje obavlja NBS ogleda se u kontroli banaka, što je i tema ovog rada. Kontrolna funkcija NBS je definisana kako Zakonom o Narodnoj banci Srbije, tako i Zakonom o bankama. NBS funkciju kontrole banaka obavlja u postupku osnivanja banke, ali i u toku njenog poslovanja. Postupak osnivanja banke, kao

najznačajnije finansijske institucije, je daleko složeniji. Složenost ovog postupka ogleda se u tome što je zakonodavac predvideo postupak dobijanja preliminarnog odobrenja, zatim dobijanje dozvole za rad, te nakon održavanja osnivačke skupštine banke i pribavljanje obavezne saglasnosti, a radi registracije banke. Kontrolna funkcija se ogleda i u činjenici da banka ima obavezu podnošenja redovnih i vanrednih izveštaja Narodnoj banci. Na ovaj način NBS štiti finansijsko tržište Republike Srbije od nestabilnosti i kriza koje može izazvati nelikvidno, nesigurno i nezakonito poslovanje banaka.

Ključne reči: *Narodna banka Srbije, NBS, centralna banka, kontrola banaka.*

References

1. Bačanin, N. (2007). O pravnoj kontroli upravne funkcije Narodne banke Srbije [On the legal control of the administrative function of the National Bank of Serbia]. In: Bejatović, S. (prir.), *Pravni sistem Srbije i Evropske unije i Saveta Evrope: knjiga II* [*The legal system of Serbia and the standards of the European Union and the Council of Europe: book II*] (pp. 41–78). Kragujevac: Pravni fakultet Univerziteta u Kragujevcu, Institut za pravne i društvene nauke
2. Bjekić, Z. (2006). Banke kao privredni subjekti u savremenim tržišno-ekonomskim uslovima [Banks as economic entities in modern market and economic conditions]. *Pravo teorija i praksa, 23* (1-2), pp. 31–44
3. Carić, S., Vitez, M., Dukić Mijatović, M. & Veselinović, J. (2016). *Privredno pravo* [*Commercial Law*]. Novi Sad: Fakultet za ekonomiju i inženjerski menadžment
4. Čolić, B. (2007). Poslovanje banaka i Narodne banke Srbije, funkcije i odnosi [Business of banks and the National Bank of Serbia, functions and relations]. *Pravo i privreda, 44* (9-12), pp. 61–74
5. Evropsko nadzorno telo za bankarstvo [European banking authority]. Downloaded 2021, December 15 from https://www.eba.europa.eu/regulation-and-policy/implementing-basel-iii-europe
6. Golubović, S. (2016). Kontrolna funkcija Narodne banke Srbije [Control function of the National Bank of Serbia]. *Zbornik radova Pravnog fakulteta u Nišu*, *55* (74), pp. 175–187
7. Zakon o bankama [Law on Banks]. *Službeni glasnik RS*, br. 107/05, br. 91/10 i 14/15

8. Zakon o Narodnoj banci Srbije [Law on the National Bank of Serbia]. *Službeni glasnik RS*, br. 7203, br. 55/04, 85/05 – dr. zakon, 44/10, 76/12, 106/12, 14/15, 40/15 – odluka US i 44/18
9. Zakon o privrednim društvima [Law on Companies]. *Službeni glasnik RS*, br. 36/11, 99/11, 83/14 – dr. zakon, 5/15, 44/18 i 91/19
10. Pljakić, Lj. (2015). Diskreciona ovlašćenja u upravnim aktima Narodne banke Srbije u vršenju kontrolne funkcije nad poslovnim bankama [Discretionary powers in the administrative acts of the National Bank of Serbia in performing the control function over commercial banks]. *Pravni život*, *64* (10), pp. 221–235
11. Šojić, M. & Hinić, B. (2014). 130 godina Narodne banke Srbije 1884-2014 [130 years of the National Bank of Serbia 1884-2014]. *Bankarstvo*, *4*3 (3), pp. 138–151
12. Vunjak, N. & Kovačević, Lj. (2006). *Bankarstvo: bankarski menadžment* [*Banking: banking management*]. Bečej: Proleter ; Subotica: Ekonomski fakultet

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THE LEGAL TREATMENT OF THE INITIATION AND IMPLEMENTATION OF BANKRUPTCY AGAINST LEGAL ENTITIES IN REPUBLIC OF SERBIA

ABSTRACT: In contemporary conditions of an operation of business entities, the importance and significance of bankruptcy and the bankruptcy procedure are indisputable. The establishment of debtor-creditor relations in business operations of legal entities and individuals may lead to the risk of the debtor in a certain business not being able to meet the obligation he/she has assumed. The roots of bankruptcy as a commercial law institution can be traced as far back as Roman law. The bankruptcy issues in Serbia are governed by the Bankruptcy Law of 2009. According to the importance and essence of the topic of the paper, the subject of the paper analysis refers to the concept and characteristics of bankruptcy as an important commercial law institution. It also includes the aims of bankruptcy and the criteria for its classification, as well as the question of the fundamental assumptions for the implementation of bankruptcy law rules, and the options available to bankruptcy debtors in situations when the causes of bankruptcy are met. The paper focuses in particular on a legal treatment of the initiation and implementation of bankruptcy against legal entities in Republic of Serbia.

Keywords*: bankruptcy, the bankruptcy procedure, legal entities, the Bankruptcy Law, Republic of Serbia.*

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1. Introduction

The establishment of debtor-creditor relations in the business transactions of legal entities and natural persons may lead to the risk of a debtor in a certain business transaction not being able to meet the obligation they have undertaken. It is emphasized in legal theory that in "the modern business conditions, debts have become an inseparable part of economic life and an important source of financing of business activities" (Dragojlović, Milošević & Stamenković, 2019, p. 18).

It goes without saying that a creditor, faced with the situation of debtor insolvency, has as the first option the initiation of a civil procedure, with the aim of enforced collection of their claims from the debtors in an execution procedure. However, as Radović (2017) points out, "a problem arises when it becomes impossible to protect the interests of all the creditors in the execution procedure, as the debtor is in financial difficulties, which jeopardize the settlement of all the creditors" (p. 29).

It is in these situations, when the debtor becomes insolvent, and no other option of settling the creditors' claims is adequate (for instance, it provides the settlement of only one, and not of the other creditors), that the institution of bankruptcy is of great imortance, as it offers the possibility of settling all the debtors' creditors, through a legally stipulated and regulated procedure.

The foundations of bankruptcy, as a commercial-law institution, can be traced as far back as Roman law, through three institutions. The first institution of Roman law is *Missio in bona*, and it assumed that, in case of a debtor's inability to pay their debts to creditors, "the praetor could allow the creditors to enter the debtor's estate (including the debtor's loss of honour and a prison sentence) and sell it to a person (*bonorum emptoru*), who was obliged to pay the creditors in defined percentages" (Opačić, 2012, p. 40). The second institution is *Cessio bonorum*, whereby the debtor "of their own free will (without losing their honour and being sentenced to prison in this case) assigned their estate to their creditors for the purpose of collection of their claims" (Opačić, 2012, p. 40). The third institution is *Distracti bonorum*, which assumed the sale of "only part of the debtor's assets which was sufficient to settle the debts to creditors" (Dragojlović, et al., 2019, p. 18).

In Serbia the bankruptcy institution "was introduced for the first time in 1853 through the Law on Judicial Procedure and Civil Lawsuits for the Principality of Serbia, under provisions of which the purpose of the bankruptcy procedure was for "*the estate of the overindebted that cannot be collected to be converted for settlement following a legal order"* (Stanković & Lazić, 2020,

p. 217). The first Bankruptcy Law in today's Republic of Serbia territory "was passed in 1861, with the following legal provision – *Bankruptcy is a judicial procedure in which the estate of a debtor who is unable to settle their debt is divided between the creditors following a definite legal order"* (Stanković & Lazić, 2020, p. 217).

As opposed to the previous legal solution (Bankruptcy Procedure Act, 2004), which stipulated by its provisions the conduction of bankruptcy procedures against both legal entities and entrepreneurs, the current Bankruptcy Law (2009) stipulates in article 1 that the new legal solutions "regulate the conditions and manner of initiating and implementing bankruptcy" only against legal entities.

The subject of analysis in the rest of the paper will be the concept and characteristics of bankruptcy as an important commercial-law institution, the aims of bankruptcy and the criteria for its classification, as well as the question of the fundamental assumptions for the implementation of the rules of bankruptcy law, and the options available to bankruptcy debtors in situations when bankruptcy causes are met. The paper will focus in particular on the legal treatment of initiating and implementing bankruptcy over legal entities in the Republic of Serbia.

2. The concept, aims and classification of bankruptcy

According to Jovanović-Zattila (2003), bankruptcy is "an institution of joint, proportionate and simultaneous settlement of creditors out of the estate of a bankruptcy debtor. It protects the creditors from each other and the debtor from the creditors who try to settle their claims at all costs" (p. 3).

In defining the essence of the conceptual definition of bankruptcy, we can distinguish between the legal and the economic aspect.

From the legal standpoint, "bankruptcy is a procedure in which all the creditors of the bankruptcy debtor are settled" (Radović, 2017, p. 30), namely, it is "the court seizure of the debtor's entire property for the benefit of the joint creditors" (Dragojlović, et al., 2019, p. 20). From the economic point of view, "bankruptcy is the state of the debtor who has suspended payments, or whose property is insufficient to settle the claims of all the creditors whose claims are threatened by the suspension of payments or the overindebtedness of their common debtor" (Čolović & Miljević, 2010, p. 7). As pointed out by Vučković (2014), "bankruptcy is the state which results in the disappearance of a business entity from economic life" (p. 56).

In other words, due to insolvency or overindebtedness, the debtor is unable to meet their due monetary obligations. According to Milosavljević (2016), "insolvency is manifested by the debtor's suspension or cessation of payment of due obligations, while overindebtedness represents a specific financial condition of the debtor in which their entire property is not sufficient to meet their debts. In both the first and the second case the debtor manifests inability to pay" (p. 57).

Kozar and Dukić Mijatović (2015) emphasize that "bankruptcy as an institution should be distinguished from the bankruptcy procedure, which is a set of legal rules which regulate the actions of participants in that procedure" (p. 1).

According to Cvetković (2004), "the bankruptcy procedure represents a legal mechanism for a cumulative settlement of creditors of an enterprise not capable of making payments for its due obligations. The bankruptcy procedure differs from the execution procedure, which is a legal mechanism for individual settlement of creditors. The bankruptcy procedure is conducted by the competent court. This ensures the equality of all the interested parties in the procedure" (p. 2).

In addition, bankruptcy and the bankruptcy procedure should be distinguished from the bankruptcy process relation. The bankruptcy process relation "starts with the initiation of a preliminary bankruptcy procedure and lasts until the conclusion of the bankruptcy procedure. The bankruptcy process relation is regulated by the bankruptcy procedure rules. The bankruptcy process relation is established between the bankruptcy judge and other entities involved in the bankruptcy procedure" (Milosavljević, 2016, p. 58).

The causes of bankruptcy are twofold and may be classified into: objective causes and subjective causes. According to Velimirović et al. (2008), "the causes objective in nature are the economic recession and transition of socialist countries through privatization, while the subjective conditions include bad enterprise marketing, bad administration and bad management" (pp. 28–29).

On the other hand, even though "the property transformation from the beginning of the nineties of the last century led to a reduction in the value of the property of business entities" (Vučković, 2014, p. 57), the bankruptcy procedure is "often incorrectly equated with the privatization procedure, while the procedures in question are essentially different" (Cvetković, 2004, p. 3).

An efficient bankruptcy system "is an essential part of market economy as it provides security to creditors, a recovery of enterprises with financial difficulties and a faster return of blocked assets into use. In a quality bankruptcy procedure everyone wins – the creditors, the employees, and society as a

whole. A bankruptcy procedure results in the recovery of an enterprise and in this way, through an efficient redistribution of the seized assets, it represents a precondition of a faster and more successful recovery of economy as a whole" (Cvetković, 2004, p. 2). The same author also indicates that "a bankruptcy procedure is urgent by definition. The key reason for that is the fact that the assets owned by the enterprise lose their value on a daily basis, which makes it necessary for the bankruptcy procedure to be efficient and limited in time, in order to, by preserving the value of the assets, protect the interests of both the creditors who are paid out of these assets, and the employees who use the assets" (Cvetković, 2004, p. 2).

In line with provision of article 1 of the Bankruptcy Law (2009), "bankruptcy is carried out through liquidation or reorganization. Liquidation implies the settlement of creditors out of the value of the entire property of the bankruptcy debtor, or the bankruptcy debtor as a legal entity. Reorganization implies the settlement of creditors according to an adopted reorganization plan, i.e. by redefining the debtor-creditor relations, status changes in the debtor or in another way stipulated by the reorganization plan". In view of the principle of protection of bankruptcy creditors, stipulated by article 3 of the Bankruptcy Law (2009), "bankruptcy enables collective and proportionate settlement of bankruptcy creditors, in compliance with this law". At this point, Salma (2008) emphasizes, as an important characteristic of the legal framework of bankruptcy in Serbia, the fact that "this mixed solution in our law favours the debtor's fraudulous acts, i.e. favours the creation of a situation of "artificial overindebtedness", so that bankruptcy may serve to evade collection of the creditors' claims as a whole, through the institution of proportionate (i.e. reduced) settlement of creditors. Namely, the debtor may, by means of free or fictitious disposals (in bookkeeping) create a state of overindebtedness, even though there is no overindebtedness in reality" (p. 506).

Analyzing the aims of bankruptcy, Jovanović Zattila (2003) points out that "there exist two primary aims of conducting a bankruptcy procedure. The first aim is the protection of the creditors' interests, and the second is the removal from legal transactions of the entity which is unable to meet their financial obligations" (p. 49). Article 2 of the Bankruptcy Law (2009) stipulates that the aim of bankruptcy is "the most favourable collective settlement of bankruptcy creditors by realizing the highest possible value of the bankruptcy debtor, i.e. their property".

Finally, and in line with the aforesaid, "the main indicators of bankruptcy procedure efficiency are the extent of settlement, and the bankruptcy procedure duration and expenses" (Zimmermann, Obućina & Milovanović, 2015, p. 11).

There are in legal theory different "bankruptcy classification criteria" (Dukić Mijatović, 2013, p. 7). According to Dragojlović et al. (2019), "a civil bankruptcy includes all legal entities and natural persons. A division into civil and commercial bankruptcy is accepted in Anglo-Saxon law. The general bankruptcy rules are applied to the conduction of bankruptcy procedures against a majority of business entities. When more than one bankruptcy procedure is conducted against the same bankruptcy debtor, one is primary, while the others are secondary". In addition, "the theory of bankruptcy law also differentiates between bankruptcy in the material, and bankruptcy in the formal sense. Material bankruptcy is the debtor's unfavourable material situation which is manifested by their inability to meet obligations when due. Formal bankruptcy is a court procedure initiated after establishing that a debtor is in a financial problem. Formal bankruptcy exists as a result of the material" (p. 21).

3. Preconditions for the application of bankruptcy law rules

Contemporary legal theory underlines that the application of specific bankruptcy-law rules requires "two fundamental preconditions: a plural of creditors and financial difficulties of the debtor" (Radović, 2017, p. 30).

According to the first fundamental precondition, "bankruptcy is reasonable and justified only when the debtor has more than one creditor. What follows from this characteristic are two key bankruptcy principles: the principle of collective settlement of creditors and the principle of equal creditor treatment. This condition is almost always met when it comes to business entities, it being hard to imagine a business company not having two creditors at least" (Radović, 2017, p. 30).

According to the second precondition, "bankruptcy law is only applied in relation to bankruptcy debtors who are in major financial problems. As a result, this branch of law narrows down its scope of application in two ways: firstly, by defining the entities in relation to which a bankruptcy procedure may be conducted, and secondly, by defining the debtor's unfavourable economic situation which justifies the initiation of this kind of procedure" (Radović, 2017, p. 30).

In a situation when, in the business practice of companies, both fundamental preconditions are met, the essential substantive-law preconditions for initiating bankruptcy are deemed to exist. Whether the bankruptcy procedure will be initiated depends on the debtor's attitude.

Contemporary legal and bankruptcy theory state that the substantive-law conditions for initiating a bankruptcy procedure include:

- "the existence of a bankruptcy debtor – as the debtor is the person over whose property bankruptcy is initiated. A bankruptcy procedure is conducted against a bankruptcy debtor. If there is no bankruptcy debtor, there is no bankruptcy either" (Milosavljević, 2016, p. 77);
- the existence of a bankruptcy cause – article 11 of the Bankruptcy Law (2009) stipulates that "a bankruptcy procedure is initiated after establishing the existence of at least one bankruptcy cause, which includes: a lasting inability to pay, a threatening inability to pay, overindebtedness and failure to comply with the adopted reorganization plan, and if the reorganization plan was realized in a fraudulent or illegal manner. In addition, a lasting inability to pay exists if the bankruptcy debtor: cannot meet their monetary obligations within 45 days of the obligation due date, or if they totally suspend all payments over an uninterrupted 30-day period";
- the existence of more than one bankruptcy creditor – because in case of existence of only one bankruptcy creditor, our law does not stipulate the possibility of conduction of a bankruptcy procedure as a procedure of collective settlement of bankruptcy creditors as the conditions for their proportionate collective settlement do not exist, but one bankruptcy creditor is settled individually through the procedure of enforcement on the entire property of the bankruptcy debtor" (Milosavljević, 2016, p. 101);
- "the existence of a bankruptcy debtor's property – as the property of a bankruptcy debtor constitutes the bankruptcy estate. However, for the bankruptcy procedure to be conducted, the existence of the bankruptcy debtor's property is not sufficient, it is also required to be greater in value than the costs of the bankruptcy procedure, i.e. that the bankruptcy debtor's property is not negligible in value" (Milosavljević, 2016, p. 106).

At this point Radović (2017) states that "there are three basic options" (p. 31) available to bankruptcy debtors in the situation of fulfilment of the substantive-law preconditions for initiating bankruptcy:

- According to the first option, "a bankruptcy debtor may try to overcome the financial difficulties on their own. They can do so in different ways, by applying one or more measures, which are as a rule related to their status (e.g. change in the company policies or status changes), liquidity (e.g. real estate sales) and/or business (e.g. closing down unprofitable operations or redundant staff lay-off)" (Radović, 2017, p. 31);

– In the second option, "a bankruptcy debtor may, in an informal out-of-court procedure, try to redefine debtor-creditor relations with a few of their major creditors, with a view to preventing the occurrence or elimination of the bankruptcy cause" (Radović, 2017, p. 31);
– In the third option, the debtor and their creditors have at their disposal the initiation of a bankruptcy procedure.

4. On the legal treatment of the initiation and implementation of bankruptcy against legal entities in the Republic of Serbia

According to the currently influential legal theory views, the Bankruptcy Law which is adopted and has been in use since 2009, has created "for indebted business entities, and creditors alike, better conditions for a timely initiation of bankruptcy procedures, in order to redefine their debtor-creditor relations and preserve their business activities, or when that is not possible – preserve the business operations and property of their company and bring them within a short period of time back into use, not allowing them to become technologically outdated and significantly fall in value" (Zimmermann, Obućina & Milovanović, 2015, p. 11).

Considering the main bankruptcy procedure efficiency indicators discussed above, the Bankruptcy Law, at the time of its enactment, "was aimed at improving the quality of the bankruptcy procedure in the Republic of Serbia, through a higher extent of settlement of creditors, lower bankruptcy procedure expenses and a reduction of the bankruptcy procedure duration, as well as through introducing additional incentives for creditors, and debtors in particular, to initiate the bankruptcy procedure in a timely manner in order to try to overcome the financial difficulties and maintain their business" (Zimmermann, et al., 2015, p. 11).

The Bankruptcy Law (2009), besides the provisions mentioned above, stipulates in articles 3-10 the bankruptcy principles, which include: "the principle of protection of bankruptcy creditors, the equal treatment and equality principle, the cost effectiveness principle, the principle of judicial conduct of the procedure, the imperative and preclusive principle, the urgency principle, the two-instance principle, the publicity and information principle".

Articles 15 and 16 of the Law govern the competence, and articles 17-42 the bankruptcy procedure authorities. According to article 17, "the bankruptcy procedure authorities are the bankruptcy judge, the bankruptcy trustee, the assembly of creditors and the board of creditors."

Articles 43-54 regulate issues with regard to the main procedural provisions, parties and participants in the procedure.

The Law also regulates the issues of initiating a bankruptcy procedure and a preliminary bankruptcy procedure (articles 55–67), starting the bankruptcy procedure (articles 68-100), the bankruptcy estate (articles 101–110), and the establishment of claims (articles 111–118).

The issues relating to refuting the legal actions of the bankruptcy debtor, the conclusion of the bankruptcy procedure, reorganization and international bankruptcy, are regulated in the part from article 119 to the transitional and final provisions of article 207.

According to article 55, a bankruptcy procedure is "initiated on the proposal of a creditor, debtor or liquidation trustee", which is, in line with article 56, "submitted to the competent court".

The bankruptcy judge (in line with provisions of article 60) within "three days of the day of delivery of the petition for initiating a bankruptcy procedure, makes the decision on initiating a preliminary bankruptcy procedure. The preliminary bankruptcy procedure is initiated with a view to establishing the reasons for initiating the bankruptcy procedure". The bankruptcy judge will (article 62), "ex officio or on the request of the bankruptcy petitioner, by the decision to initiate a preliminary bankruptcy procedure, define security measures with the aim of preventing any changes to the bankruptcy debtor's property status, or destruction of the business documentation, if there is the risk of the bankruptcy debtor alienating their property or destroying the documentation prior to starting the bankruptcy procedure". A person meeting the conditions for a bankruptcy trustee may be appointed interim bankruptcy trustee in the preliminary bankruptcy procedure (article 65).

If a preliminary bankruptcy procedure is initiated, "the bankruptcy judge schedules a hearing for discussing the existence of a bankruptcy cause for starting the bankruptcy procedure no later than 30 days from the day of receipt of the petition for initiating the bankruptcy procedure" (article 68). In accordance with provisions of article 69, "the bankruptcy judge initiates the bankruptcy procedure by issuing the bankruptcy procedure initiation order, thereby adopting the petition to initiate the bankruptcy procedure". On the basis of the bankruptcy procedure initiation order, the bankruptcy judge "schedules a hearing for claim examination and the first hearing with the creditors" (article 72).

As of the day of starting the bankruptcy procedure, and according to article 74, "the agency and management rights of directors, agents and proxies, as well as of management and supervisory authorities of the bankruptcy debtor

shall expire, and be transferred to the bankruptcy trustee. The legal business of disposal of objects and rights that make up the bankruptcy estate, which the bankruptcy debtor concluded after initiating the bankruptcy procedure, does not produce legal effect, except in cases of disposal subject to the general rules of reliance on public books, while the other party is entitled to seek the repayment of the consideration out of the bankruptcy estate as a bankruptcy creditor. The powers of attorney granted by the bankruptcy debtor, which refer to the property included in the bankruptcy estate, expire by initiating the bankruptcy procedure".

According to the current legal solutions, "bankruptcy creditors realize their claims against a bankruptcy debtor only in the bankruptcy procedure" (article 80), and file their proofs of claim to the competent court in writing" (article 111). A creditor with title over property files a claim to exclude from bankruptcy an asset which does not belong in the bankruptcy estate, according to provisions of article 112.

In line with article 113, "after the expiry of the claim filing deadline, the bankruptcy judge submits all the proofs of claim to the bankruptcy trustee. The bankruptcy trustee determines the acceptability, scope and order of payment of each individual claim and prepares a list of approved and refuted claims, as well as the order of settlement of secured and lien creditors". The final list with all the proofs of claim is prepared at the examination hearing (article 114).

According to provisions of article 116, a claim is deemed "established if it is not refuted by the bankruptcy trustee, or by the creditors until the conclusion of the examination hearing".

Under provisions of article 131, the bankruptcy judge issues a bankruptcy order if: "it is voted for at the first creditors' hearing by a corresponding number of bankruptcy creditors; no reorganization plan was submitted in the stipulated timeframe; no reorganization plan was adopted at the hearing for reorganization plan consideration". Following the passage of the bankruptcy order, "the bankruptcy trustee initiates and conducts the sale of the entire property, property unit or individual property of the bankruptcy debtor, or the sale of the bankruptcy debtor as a legal entity (a way of conversion into cash), in line with this law and the national standards of bankruptcy estate management" (article 132).

According to provisions of the Bankruptcy Law (2009), in addition to conversion of the bankruptcy estate into cash, distribution is also possible. The bankruptcy estate to be divided among bankruptcy creditors (the distribution estate) consists of "the financial assets of the bankruptcy debtor on the day of opening the bankruptcy procedure, the financial assets obtained from continuation of started business operations and the financial assets realized

by conversion of the bankruptcy debtor's objects and rights into cash, as well as the bankruptcy debtor's claims collected in the course of the bankruptcy procedure. The distribution of the assets for the purpose of settlement of the bankruptcy creditors is conducted before or after the main division, in line with the dynamics of the bankruptcy debtor's cash assets inflow" (article 138).

Finally, in line with article 148, "the bankruptcy judge issues the order of conclusion of the bankruptcy procedure at the final hearing. If all the property of the bankruptcy debtor is converted into cash, and there are lawsuits pending, the bankruptcy judge may, on the proposal of the bankruptcy trustee, issue an order of conclusion of the bankruptcy procedure, but not before issuing an order on the main division".

5. Conclusion

In the contemporary conditions of operation of business entities, the importance and significance of bankruptcy and the bankruptcy procedure are indisputable. Changes in the economic trends are a norm which points to the fact that we should focus attention not only on the incentives for starting businesses, but also on the appropriate legal and practical solutions when closing down companies.

The transition period was not the only key determinant in the domain of application and practical realization of a large number of bankruptcy procedures. As a matter of fact, bankruptcy as a commercial-law institution should not be associated with the privatization of socially-owned enterprises and transition in a large number of countries, including our country. The economic crisis of 2008 shed light on the fact that solutions in the field of bankruptcy and timely reactions when enterprises are closed down should be continuously updated and maintained, as periods of economic and business destabilization are not a historical category, but reality which requires commitment and awareness of scientific and professional public alike.

In addition, economic movements and certain factors of destabilization of national and world economy caused by the Covid-19 virus indicate how important it is to have a powerful system of reorganization for sustainable firms capable of overcoming financial distress, and a powerful liquidation system to immediately close down the firms incapable of survival. It even appears that in the modern conditions of living and operating businesses, it is more than ever before vital to have adequate solutions for an efficient restructuring and way out of the crisis which affects or is certain to affect the business of certain companies.

In line with the importance of the topic and the aforesaid, the subject of analysis of the paper have been the concept and characteristics of bankruptcy as an important commercial-law institution, then the bankruptcy aims and its classification criteria, as well as the issue of the fundamental preconditions for the application of bankruptcy law rules. The paper is particularly focused on the legal treatment of the initiation and implementation of bankruptcy over legal entities in the Republic of Serbia.

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ZAKONSKI TRETMAN POKRETANJA I SPROVOĐENJA STEČAJA NAD PRAVNIM LICIMA U REPUBLICI SRBIJI

REZIME: U savremenim uslovima poslovanja privrednih subjekata, nesumnjivo se ističe značaj i važnost stečaja i stečajnog postupka. Uspostavljanje dužničko-poverilačkih odnosa prilikom poslovanja pravnih i fizičkih lica može dovesti do rizika da dužnik u određenom poslu neće biti u mogućnosti da realizuje obavezu na koju se obavezao. Stečaj kao privrednopravni institut svoje temelje pronalazi još u Rimskom pravu. U Srbiji je materija stečaja uređena Zakonom o stečaju iz 2009. godine. Shodno značaju i suštini teme rada, predmet analize u radu jesu pojam i karakteristike stečaja kao značajnog privrednopravnog instituta, zatim, ciljevi stečaja i krterijumi za njegovu podelu, kao i pitanje fundamentalnih pretpostavki za primenu pravila stečajnog prava, kao i opcije koje stečajni dužnici imaju u situacijama kada su ispunjeni stečajni razlozi. Naročita pažnja u radu posvećena je zakonskom tretmanu pokretanja i sprovođenja stečaja nad pravnim licima u Republici Srbiji.

Ključne reči: *stečaj*, *stečajni postupak, pravna lica, Zakon o stečaju, Republika Srbija.*

References

1. Cvetković, M. (2004). *Komentar predloga Zakona o stečaju* [*Commentary on the Draft Bankruptcy Law*]. Beograd: CLDS

2. Čolović, V. & Milijević, N. (2010). *Stečajni postupak* [*Bankruptcy procedure*]. Banja Luka: Panevropski univerzitet Apeiron
3. Dragojlović, J, Milošević, I. & Stamenković, G. (2019). Krivično delo prouzrokovanje stečaja: specifičnosti i obeležja [Criminal act of Causing Bankruptcy - specific characteristics and features]. *Pravo – teorija i praksa*, *36* (1-3), pp. 16–30
4. Dukić Mijatović, M. (2013). The legal position of secured creditors in financial resturing and bancruptcy. *Pravo – teorija i praksa*, *30* (1-3), pp. 1–13
5. Jovanović-Zattila, M. (2003). *Poverioci u stečaju*: *doktorska disertacija* [*Bankruptcy creditors: doctoral thesis*]. Beograd: Pravni fakultet
6. Kozar, V. & Dukić-Mijatović, M. (2015). Consolidated bankruptcy of related persons. *Pravo - teorija i praksa*, *32* (7-9), pp. 1–9
7. Milosavljević, A. (2016). *Imovinskopravne posledice pokretanja stečajnog postupka u domaćem i uporednom pravu: doktorska disertacija* [*Property law consequences of initiating bankruptcy proceedings in domestic and comparative law: doctoral thesis*]. Novi Sad: Univerzitet Educons, Fakultet za evropske pravno-političke studije
8. Opačić, A. (2012). Individualni stečaj [Individual bankruptcy]. *Glasnik Advokatske komore Vojvodine*, *84* (1), pp. 37–55
9. Radović, V. (2017). *Stečajno pravo: knjiga prva* [*Bankruptcy Law: Book one*]. Beograd: Pravni fakultet – Centar za izdavaštvo i informisanje
10. Salma, M. (2008). Postupak povodom prava insolvencije EU [EU insolvency law proceedings]. *Zbornik radova Pravnog fakulteta u Novom Sadu,* 1–2, pp. 499–512
11. Stanković, S. & Lazić, D. (2020). Prouzrokovanje (lažnog) stečaja [Causing (False) Bankruptcy]. *Baština*, *50*, pp. 215–234
12. Velimirović, M, Čolović, V, Spasić, S. & Milijević N. (2008). *Aktuelna pitanja stečajnog prava* [*Current issues of Bankruptcy Law*]. Banja Luka: Udruženje pravnika Republike Srpske
13. Vučković, V. (2014). Prouzrokovanje lažnog stečaja [Causing false Bankruptcy]. *Pravo - teorija i praksa*, *31* (4-6), pp. 54–67
14. Zakon o stečajnom postupku [Bankruptcy Procedure Act]. *Službeni glasnik RS*, br. 84/04 i 85/05
15. Zakon o stečaju [Bankruptcy Law]. *Službeni glasnik RS*, br. 104/09, 99/11 - dr. zakon, 71/12 - odluka US, 83/14, 113/17, 44/18 i 95/18
16. Zimmermann, F., Obućina, J. & Milovanović, I. (2015). *Pobijanje pravnih radnji stečajnog dužnika* [*Refuting the legal actions of the bankruptcy debtor*]. Beograd: Agencija za licenciranje stečajnih upravnika

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THE INFLUENCE OF ARTIFICIAL INTELLIGENCE ON THE RIGHT TO FREEDOM OF EXPRESSION

ABSTRACT: The right to freedom of thought and expression represents one of the fundamental principles of a democratic and civilized society. The Internet has become the most important communication medium through which the individuals exercise their right to seek, receive and impart information and ideas of any kind, regardless of any frontiers. Various technologies have been used to enable an online communication, while today artificial intelligence systems are deployed in every corner of the Internet, providing information dissemination and communication. The application of the artificial intelligence systems is based on generating, collecting, and processing a large quantity of personal data with the aim of profiling users and predicting their future behaviour. This can have serious consequences for the right to freedom of expression. Through the content personalization on online platforms, particularly on social networks and search engines, the artificial intelligence systems choose the content that users can see and the order in which they see it, leaving them in the so-called 'filter bubbles'. Artificial intelligence systems also moderate the content, removing the one which does not comply with the rules of the online platforms, and, temporarily or permanently, blocking the users who violate the community rules, raising thus the issues of legality, legitimacy and proportionality of the decisions made by artificial intelligence.

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Key words: *Artificial intelligence, freedom of expression, freedom of thought, content moderation, content personalization.*

1. Introductory considerations

Artificial intelligence (hereinafter – AI), is dramatically changing every aspect of our lives. Its capabilities today include learning from experience and rendering decisions autonomously without human interference, which makes it a disruptive and most transformative technology of the early 21st century (Barfield, 2018, p. 2). It is present on our smart phones, in the form of voice assistants like Siri and Bixby, they can translate, read our e-mail, or search for a desired location. AI shapes our Internet experience every time when we are online, just like it selects movies and TV series for us on streaming services like HBO or Netflix, and we are one step away from producing the autonomous vehicles. Automated decision-making is increasingly used in the assessment of creditworthiness, in the selection of candidates in higher education, to assess the potentials of workers in the processes of employment and dismissals, and in diagnosing certain diseases.

Artificial intelligence systems rely on Big data, huge collections of data, collected from various and numerous sources, from interactions in social networks to data from street cameras. Estimates suggest that at least 2.5 quintillion bytes of data are produced worldwide each day (Price, n.d.), which requires a kind of sorting by AI and Big data technology allows for the widespread collection, storing and processing of data. Consequently, implications for the right to privacy and data protection are immense. Every online interaction creates a large number of data, each search on the Internet is recorded, including personal and sensitive data and collection of data mostly takes place without any knowledge and consent of the user. As a consequence, the possibility of abuse is great (Kostić, 2021, p. 18).

In addition to the obvious effect that collection and processing of data has on the right to privacy and data protection, the right to freedom of expression, whose exercise depends to a large extent on the privacy protection, may also be denied. “The technological development of modern society has led to the multiplication of the space in which social life and social interactions take place” (Bjelajac & Filipović, 2021, p. 16). The Internet is used every day to exercise freedom of expression, while social media ensure that everybody gets an opportunity to express his/her opinion; and seek, receive and impart information regardless of frontiers. However, AI curates and personalizes content available to users on search engines and

social media, based on data and personal preferences it has about users, just like it is responsible for content moderation, i.e. the removal of insulting and harmful content, as well as the content that does not comply with the rules of the online platforms.

This paper aims to examine the impact of the use of AI on the enjoyment of the right to freedom of opinion and expression. First, the definition of artificial intelligence will be presented, and the concept of algorithmic decision-making and the most advanced form of AI, machine learning, will be analysed, in order to better understand the ways in which they shape our reality. In the subsequent chapters, two functions of AI, personalization and moderation of online content will be explored, which are deployed by Internet intermediaries, particularly search engines and social networks, as well as their effects on the right to freedom of opinion and freedom to seek, receive and impart information and ideas. In the end, it is worth noting that the terms "AI" and "AI system" will be used in this paper, without specifying if they refer to algorithmic decision-making or machine learning.

2. Concept and forms of artificial intelligence

Artificial intelligence is used in various ways, fields of its application increase every day, while there is no consensus about its definition. John McCarthy, an American scientist and one of the founders of the AI discipline, defined AI in a conference in 1956 at *Dartmouth College* as "the science and engineering of making intelligent machines" (Liao, 2020, p. 3). In its broadest sense, it can be defined as making machines capable of performing tasks that require cognitive functions like thinking, learning and problem solving (ibid.). A detailed definition given by the EU High Level Expert Group on Artificial Intelligence (AI HLEG, 2018) reads: "Artificial intelligence refers to systems designed by humans that, given a complex goal, act in the physical or digital world by perceiving their environment, interpreting the collected structured or unstructured data, reasoning on the knowledge derived from this data and deciding the best action(s) to take (according to pre-defined parameters) to achieve the given goal. AI systems can also be designed to learn to adapt their behaviour by analysing how the environment is affected by their previous actions" (p. 7).

AI is thus an umbrella term describing the processes that, in the essence, partly or fully delegate activities of making and implementing decisions from people to software systems. Software systems act in the virtual world, and include search engines software, image analysis, virtual assistants, voice or

face recognition systems, while AI can be installed in hardware systems like autonomous cars, robots,[1] or drones (AI HLEG, 2018, p. 1).

AI includes a wide range of research and it can take various forms, the most advanced being machine learning, a technology that makes it possible for the systems to learn directly from examples, data and experience. Instead of following pre-programmed rules, as was the case with the earliest forms of AI, these systems "are set a task and given a large amount of data to use as examples of how this task can be achieved or from which to detect patterns. The system then learns how best to achieve the desired output" (The Royal Society, 2017, p. 19). For example, smart home devices or virtual assistants keep learning from collected data about everyday linguistic and speech patterns in order to process and answer more accurately requests from their users (Kaye, 2018, par. 4). Among many limitations of machine learning systems, very significant one lies in the fact that these systems are applied in the situations where moral decisions must be made without human supervision, although they do not understand characteristics of the real world: "They do not have self-awareness or consciousness and they cannot think for themselves" (Liao, 2020, p. 9).

AI systems are based on algorithms - sets of instructions with "encoded procedures for transforming input data into a desired outcome, based on specific calculations" (Gillespie, 2014, p. 167). They can be very simple, like those that arrange word lists in alphabetical order, or complex, as algorithms for voice recognition or financial forecasting. It is certainly important to underline that, although not all algorithms include AI, every AI system includes sets of algorithms. AI itself can be perceived as one complex algorithm that combines algorithms for performing various functions (Sartor & Lagioia, 2020, p. 3). Sometimes algorithm decides autonomously, like automatically filtering spam mail from the inbox, and sometimes people make decisions with the help of algorithm, for example, when hiring, and such decisions are semi-automated (Zuiderveen Borgesius, 2018, p. 11). It is precisely the algorithm decision-making that has the most significant implications for human rights, as the database that train the system can be biased and thus produces discriminatory effects. An example is Google's 'Photos', image recognition application, which labelled two dark-skin persons as "gorillas" in 2015, because the data used for training the algorithm did not include sufficient number of pictures of persons from various racial and ethnic groups (Simonite, 2018).

[1] For example, a humanoid robot of Hanson Robotics-a - Sophia, able to participate in interviews.

3. Content personalization, the right to freedom of opinion and the right to receive information and ideas

Today, when communication mostly takes place online, traditional media are being replaced by social networks, news aggregators and search engines, which dominate the ways in which individuals are informed. Society heavily relies on the online platforms to exercise freedom of expression and to access news, as the European Court of Human Rights confirms that Internet "plays an important role in enhancing the public's access to news and facilitating the dissemination of information in general" (Times Newspapers Ltd v. The United Kingdom, par. 27),[2] and "has now become one of the principal means by which individuals exercise their right to freedom of expression" (Ahmet Yıldırım v. Turkey, par. 54),[3] while "the same rights that people have offline must also be protected online, in particular freedom of expression" (UN Human Rights Council, 2021, par. 1). In the abundance of news and information available online, content personalization done by AI, organizes the chaos on the Internet, ensuring individuals find timely and relevant information (Kaye, 2018, p. 12).

Content personalization on online platforms implies the use of algorithms that filter news and information for users based on their personal preferences and wishes. Internet intermediaries, namely, carefully record and store data on each user's activity online, using these huge traces of data to create individual user models, on the basis of which the AI systems will predict what news and information is relevant for the user, filtering out and omitting irrelevant information. As a consequence, search engine results will vary from user to user, while individuals with the same friends on social networks will have access to different news and information based on their previous interaction with the platforms (Bozdag, 2013, pp. 209–211).

Internet search is one of the most widespread forms of content personalization done by AI (Kaye, 2018, p. 11). For this reason, search engines play a very important role for individuals seeking, receiving or imparting information (Committee of Experts on Internet Intermediaries, MSI-NET, 2018, p. 17). Google, for example, uses various 'signals' to personalize content, such as earlier searches and keywords, location, recent social network contacts, so "different users receive different results based

[2] Times Newspapers Ltd v. The United Kingdom, Applications nos. 3002/03 and 23676/03, Judgment of the ECtHR, 10 March 2009.

[3] Ahmet Yıldırım v. Turkey, Application no. 3111/10, Judgment of the ECtHR, 18 March 2013.

on the same keyword search" (Bozdag, 2013, p. 211). It is unlikely that the content that is not highly indexed or ranked by the search engine, will find its way to wider audience, or be seen at all (MSI-NET, 2018, p.17). On the other hand, social networks show the content based on subjective assessments of the extent to which it is attractive and interesting to the user (Kaye, 2018, p. 10). Facebook gets these assessments by registering and collecting data on the overall interaction history of users, i.e. user interaction with other users, the so-called 'social gestures', including likes, shares, comments, subscriptions to certain content, etc. (Bozdag, 2013, p. 211). Consequently, AI systems that perform personalization "thus control the incoming information (user does not see everything available), but also determine the outgoing information and who the user can reach (not everything shared by the user will be visible to others)" (Bozdag, 2013, p. 211).

The question arises as to how the personalized online experience, created by AI system based on personal preferences and interests, where users are offered little or no exposure to the opinions contrary to their own, jeopardizes individuals' right to form and develop their opinion. The freedom to hold opinion, as a separate right in the corpus of the rights that fall under the freedom of expression, is protected by all key international and regional human rights instruments, and was first proclaimed in the Universal Declaration of Human Rights (1948) in Article 19,[4] later reaffirmed by Article 19 of the International Covenant on Civil and Political Rights (1966) and the European Convention on Human Rights (1952) in Article 10. This freedom is necessary as a precondition for enjoying freedom of expression, since an individual will impart ideas and information that he previously had formed an opinion about (Beširević et al., 2017, p. 247). In addition, the freedom to hold opinion without interference is an absolute right, a *forum internum* of freedom of expression and as such "permits no exception or restriction" (UN Human Rights Committee, 2011, par. 9).

Furthermore, an essential element of the right to freedom of opinion is the right to form an opinion and develop it through judgment, as well as the "freedom from undue coercion in the development of an individual's beliefs, ideologies, reactions and positions" (Kaye, 2018, p. 23). It is also a duty of the state not to allow the indoctrination of its citizens, as well as the promotion of one-sided information that can constitute a serious obstacle to the freedom

[4] "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

to form and hold opinions (Bychawska-Siniarska, 2017, p. 13). Traditional press influences the opinion of readers through content curation every day. Print media elevate stories for their cover pages, influencing knowledge of individuals about relevant daily events (Kaye, 2018, p. 24). However, the traditional press does not use "knowledge about each individual user to trigger fears and sensitivities related to certain topics with the aim of manipulating her" (Helberger, Eskens, van Drunen, Bastian & Moeller, 2020, p. 18), as is the case with personalized news.

Many scholars, namely, warn of the creation of 'filter bubbles' (Pariser, 2011) and 'echo chambers' (Sunstein, 2017) in which users can be isolated due to personalization of content. 'Filter bubble', a term coined by Eli Pariser (2011), denotes "a unique universe of information for each of us" (p. 9), in which recommender algorithms trap users in an invariable and rigid belief environment that matches their existing beliefs. (Nguyen, Hui, Harper, Terveen & Konstan, 2014, p. 678). This can result in reduced exposure to critical content and poor information on current social and political issues, as well as a missed opportunity to be faced with content from the opposite side of the political spectrum (Bozdag, 2013, p. 218). The creation of 'echo chambers', as a consequence of 'filter bubbles', restricts the individual to communicate only with like-minded persons, avoiding facts and beliefs he/she disagrees with (ibid.). In the Declaration by the Committee of Ministers on the manipulative capabilities of algorithmic processes (2019), the Council of Europe warned of the capability of the algorithmic decision-making and machine learning system to influence emotions and thoughts subconsciously, as well as the individual autonomy and the right to form opinions and make independent decisions (paras. 8–9). It is important to keep in mind that users cannot opt out of the AI personalization on online platforms, which can lead them to believe that the information and news that they get is the most relevant and objective information available (Kaye, 2018, p. 25).

Content personalization also raises the issue of the right to freedom to receive information. Freedom of expression is mostly associated with freedom of imparting information, while its essence is actually in receiving information: "Freedom to impart information is not related only to the freedom to send, but also takes into account the reader, listener, audience in general, and its right to freely receive information" (Beširović et al., 2017, p. 253). In a number of its judgments, European Court of Human rights emphasizes that the press has a duty to impart information and ideas about political and other issues of public interest, and that the public has the right to receive such information (The Sunday Times v. The United Kingdom, par. 65; Lingens v.

Austria, par. 41).[5] Article 10 of the ECHR, therefore, guarantees not only the freedom of press to inform the public, but also the right of the public to be duly informed (The Sunday Times v. The United Kingdom, par. 66),[6] while the freedom to receive information also implies that the right of an individual to receive information that others are willing to impart on him cannot be restricted (Leander v. Sweden, par 74).[7]

Thus, algorithmic decision-making in content personalization reduces diversity and quality of information that individuals receive, requested and received information is mostly a reflection and confirmation of existing opinions and attitudes, which leads to "never seeing the other side of an argument and thus fostering an ill-informed political discourse" (Bozdag, 2013, p. 218). In particularly sensitive societies, effects of 'filter bubbles' and 'echo chambers' can further exacerbate the socio-political climate and lead to further polarization and radicalization in the society (Kostić, 2021, p. 33).

4. Content moderation and the right to impart information and ideas

In September 2016 Facebook removed the cult Pulitzer Prize winning photograph "Terror of War", better known as "Napalm Girl", which features a girl running away naked after the napalm bomb attack during the Vietnam War. Facebook defended its decision by the fact that nudity violated community standards, particularly nudity in the context of child abuse images (Hu, Neupane, Echaiz, Sibal & Lam, 2019, p. 41). After a wave of negative publicity, Facebook annulled its decision and recognized the significance and value of the photo.

After certain content is uploaded in the digital space, it is automatically saved and available on various online platforms to a large number of users. The platforms, in the post-moderation process, through their own control mechanisms, assess whether the content is in compliance with the platform rules (*Terms of Service*). If non-compliance is determined, the content will be removed, while in case the conduct of a user violates community rules, the user will be temporarily or permanently blocked (Kostić, 2021, p. 35). It is precisely the AI systems that moderate content in accordance with the

[5] The Sunday Times v. The United Kingdom, Application no. 6538/74, Judgment of the ECtHR, 26 April 1979. Lingens v. Austria, Application no. 9815/82, Judgment of the ECtHR, 8 July 1986.

[6] The Sunday Times v. The United Kingdom, Application no. 6538/74, Judgment of the ECtHR, 26 April 1979.

[7] Leander v. Sweden, Application no. 9248/81, Judgment of the ECtHR, 26 March 1987.

standards and rules of social media platforms, removing and blocking content that threatens national security, incites violence, terrorism, constitutes hate speech, nudity, child exploitation, i.e. content which is prohibited under most laws. AI systems assess the content through upload filters and automatically block the publication of content that is prohibited according to predefined criteria, while there are also reporting mechanisms that allow users to report illegal and inappropriate content, followed by review procedures, which are decided by human moderators and/or AI, when the content can be removed, and user accounts temporarily or permanently blocked (Bukovska, 2020, pp. 32–33). The largest social media platforms, such as Google and Facebook, have often claimed that full removal of content is done with human intervention, while the truth actually is that moderation takes place through semi-automated or fully automated processes (MSI-NET, 2018, p. 18).

According to online platforms, AI systems are not only more efficient in identifying illegal content and content that does not comply with the rules of the platform, but they also have a higher accuracy rate than human decision-making (Kaye, 2018, p. 14). The reason for this lies in the amount of inappropriate, harmful, and illegal content that is dispatched to the online space every hour, which exceeds capacities of human moderation (Kaye, 2018, p. 14). It should also be taken into consideration that the moderation of harmful content implies encounters with very disturbing scenes, such as scenes of explicit violence, child abuse and other toxic imagery, which proved to be very challenging for humans, both psychologically and in terms of health (York & Zuckerman, 2019, p. 149).

On the other side, the limitations of AI in content moderation are not insignificant. First of all, AI does not have the capacity to assess the context and nature of content and take into account different variations of language cues, as well as linguistic and cultural specificities (Kaye, 2018, p. 15). In terms of development, it has not yet reached a level where it can "differentiate between news reporting, advocacy, and satire on the one hand, and on the other, the actual incitement of harm" (Hu, Neupane, Echaiz, Sibal & Lam, 2019, p. 38). That is why, when assessing the context of content, AI is prone to errors: it can identify illegal content as permissible, which results in 'false negatives', or 'false positives' when removing legitimate content (Bukovska, 2020, p. 56). For example, in 2017, videos that showed alleged war crimes in Syria, documented by journalists and activists, were identified by YouTube machine learning systems as terrorist propaganda and they were removed (Citron & Jurecic, 2018, p. 13). The use of AI in detecting content that can pose a threat to national security can be problematic indeed. First, there is no

unique definition of such content, while terms like 'terrorism' or 'extremism' are not uniformly defined under international human rights law (Bukovska, 2020, p. 55). Second, videos and other content may advocate terrorism in one context, while in another, they may be crucial for news reporting or combating the recruitment of terrorists online (Bukovska, 2020, p. 56).

It is similar with hate speech. International human rights instruments define and stipulate restrictions on hate speech in different ways: "the context of the speech, the role of the speaker and the likelihood that the speech results in harm are among the key factors to determine whether the speech in question should be restricted" (Bukovska, 2020, p. 58). Public debates about issues of public interest are often heated and accompanied by offensive or figurative speech, irony, and mockery, which does not constitute hate speech, but AI systems can easily identify it as such and remove it: "natural language processing cannot differentiate between a sarcastic rebuttal of hate speech from an actual hateful comment" (Hu, Neupane, Echaiz, Sibal & Lam, 2019, p. 40). AI is, therefore, blind to such contextual differences.

It follows from the above that the AI may excessively remove legitimate content, which raises the issue of interference into the enjoyment of freedom of expression, as well as the "questions of legality, legitimacy and proportionality" (MSI-NET, 2018, p. 18). Namely, freedom to impart information and ideas has always been considered a key part of freedom of expression. UDHR in Article 19 and ICCPR in Article 19 guarantee the freedom to impart information and ideas by any means and regardless of frontiers, while Article 10 of the ECHR underlines that every person enjoys this right without interference of public authorities. The exercise of freedom of expression depends not only on the obligation of public authorities not to interfere, but also demands "positive measures of protection, even in the sphere of relations between individuals" (Ozgur Gundem v. Turkey, par. 43).[8] Social media platforms are under pressure from states and international community, and are often obliged, depending on the jurisdiction they are located in, to remove illegal and harmful content, which can lead to excessive removal of content that is not only harmless, but significantly contributes to public debate (MSI-NET, 2018, p. 21). In that respect, it is important to keep in mind that freedom of expression protects not only "information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands

[8] Ozgur Gundem v. Turkey, Application no. 23144/93, Judgment of the ECtHR, 16 March 2000.

of that pluralism, tolerance and broadmindedness without which there is no democratic society" (Handyside v. United Kingdom, par. 49).[9]

Furthermore, algorithmic content removal and account blocking also raises the issue of legitimacy of interference with the freedom of expression. According to Article 10 paragraph 2 of the ECHR, freedom of expression can be subject to restrictions when they are prescribed by law and necessary in a democratic society for achieving one of legitimate social goals. It follows that content removal and blocking constitutes a restriction on the freedom to impart information and ideas, which should correspond to a 'pressing social need' and pass the proportionality test, i.e. it should be proportionate to the legitimate goal. In the case of *Ahmet Yıldırım v. Turkey*[10] (2012), European Court of Human Rights established that the measure blocking Google sites in Turkey "produced arbitrary effects" (par. 68) and restricted the rights of users; had a significant collateral effect as it made large amounts of information inaccessible (par. 66), "for news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest" (par. 47). In addition, removing online content or blocking Internet access require a legal framework that would provide strict control over the scope of restraints and effective judicial revision aimed at preventing abuse of power, while "the judicial review of such a measure, based on a weighing-up of the competing interests at stake and designed to strike a balance between them, is inconceivable without a framework establishing precise and specific rules regarding the application of preventive restrictions on freedom of expression" (par. 64).

Social media companies, however, are invited and encouraged to voluntarily remove any illegal content from their platforms without a clear legal basis, which further complicates the provision of basic legal guarantees, such as accountability and transparency (MSI-NET, 2018, p. 19). Inviting Internet intermediaries to set their own criteria for removal or blocking of content, can be dangerous in terms of determining and implementing solutions by the private sector, which public authorities themselves were not able to legally prescribe: "public-private partnerships may thus allow public actors to impose regulations on expression that could fail to pass constitutional muster in contravention of rule of law standards" (MSI-NET, 2018, p. 20).

[9] Handyside v. United Kingdom, Application no. 5493/72, Judgment of the ECtHR, 7 December 1976.

[10] Ahmet Yıldırım v. Turkey, Application no. 3111/10, Judgment of the ECtHR, 18 March 2012.

5. Conclusion

Freedom of expression achieves its full application on the Internet, on online platforms, which not only allow the communication of users and expression of their opinions, but also enable the access to abundance of information and knowledge, which is decisive for forming and developing opinion. Search engines, social networks, online media, and news aggregators have a very important role for individuals who seek, receive, and impart information and ideas.

However, regardless of the significant improvements that artificial intelligence brings to our society, its unfavourable impact on the freedom of opinion and expression should not be neglected. Through personalization and recommender systems, AI shapes the online experience and decides which information and news the users will have access to, on the basis of data collected about them in a previous interaction with the platform. Content personalization has certain advantages, like having the access to information that are specifically tailored to the needs of the user, what, on the other hand, violates the right of the individual to have access to all relevant news and information of general interest. This also raises the question of interfering with the right to hold an opinion and freedom from undue coercion in forming and developing one's own opinion, bearing in mind that the result of content personalization may be the creation of the filter bubbles and echo chambers, where users have a restricted scope of accessible information that mostly reflect their earlier beliefs and attitudes. On the other side, content moderation practices, which entail removing of harmful and illegal content from social media platforms that are prohibited under international human rights law and are not in line with the rules of online platforms, may also lead to excessive removal of perfectly legal content and speech due to the fact that AI cannot recognize speech context and make a difference between, for instance, actual hate speech and irony or satire. Algorithmic censorship of online content, carried out by Internet intermediaries due to public pressure and frequently without legal basis, raises thus the issues of legality, legitimacy, and proportionality of restricting the freedom to impart information. The lack of legal framework that establishes precise rules for restricting freedom of expression online is yet another very important challenge of content moderation.

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UTICAJ VJEŠTAČKE INTELIGENCIJE NA UŽIVANJE PRAVA NA SLOBODU IZRAŽAVANJA

REZIME: Pravo na slobodu mišljenja i izražavanja predstavlja jedno od temeljnih načela demokratskog i civilizovanog društva. Internet je danas postao najznačajniji komunikacioni medij pomoću kojeg pojedinci ostvaruju svoje pravo da traže, primaju i saopštavaju informacije i ideje svih vrsta, bez obzira na granice. Razne tehnologije su korišćene da bi se omogućila onlajn komunikacija, dok se danas sistemi vještačke inteligencije nalaze u svakom kutku interneta, obezbjeđujući diseminaciju informacija i komunikaciju. Primjene sistema vještačke inteligencije zasnivaju se na generisanju, prikupljanju i obradi velike količine ličnih podataka u cilju profilisanja i predviđanja budućeg ponašanja korisnika, što može imati ozbiljne posljedice po pravo na slobodu izražavanja. Sistemi vještačke inteligencije putem personalizacije sadržaja na onlajn platformama, pogotovo na socijalnim mrežama i internet pretraživačima, biraju koji sadržaj korisnici mogu da vide i kojim redom ga vide, ostavljajući ih u takozvanim 'fitler mjehurima'. Sistemi vještačke inteligencije takođe vrše moderaciju sadržaja, uklanjajući sadržaj koji nije u skladu sa pravilima onlajn platformi i blokirajući privremeno ili trajno korisnike koji se ponašaju suprotno pravilima zajednice, što povlači pitanja zakonitosti, legitimnosti i proporcionalnosti odluka vještačke inteligencije.

Ključne riječi: *vještačka inteligencija, sloboda izražavanja, sloboda mišljenja, moderacija sadržaja, personalizacija sadržaja.*

References

1. Barfield, W. (2018). Towards a law of AI. In: Barfield W. & Pagallo U. (eds.), *Research Handbook on the Law of AI* (pp. 2–39). Cheltenham & Northampton: Edward Elgar Publishing

2. Beširević, V. et al. (2017). *Komentar Konvencije za zaštitu ljudskih prava i osnovnih sloboda* [*Commentary on the Convention for the Protection of Human Rights and Fundamental Freedoms*]. Beograd: JP Službeni glasnik
3. Bjelajac, Ž. & Filipović, A. (2021). Specific characteristics of digital violence and digital crime. *Pravo - teorija i praksa*, *38* (4), pp. 16–32, DOI: 10.5937/ptp2104016B
4. Bozdag, E. (2013). Bias in algorithmic filtering and personalization. *Ethics and Information Technology*, *15* (3), pp. 209–227. DOI: 10.1007/s10676-013-9321-6
5. Bukovska, B. (2020). *Spotlight on Artificial Intelligence and Freedom of Expression*. Vienna: OSCE Representative on Freedom of the Media. Downloaded 2021, October 26 from https://www.osce.org/files/f/documents/9/f/456319_0.pdf
6. Bychawska-Siniarska, D. (2017). *Protecting the Right to Freedom of Expression under the European Convention on Human Rights*. Strasbourg: Council of Europe. Downloaded 2021, October 21 from https://rm.coe.int/handbook-freedom-of-expression-eng/1680732814
7. Citron, D. K. & Jurecic, Q. (2018). *Platform Justice: Content Moderation at an Inflection Point*. Hoover Institution. Downloaded 21, October 6 from https://www.hoover.org/sites/default/files/research/docs/citron-jurecic_webreadypdf.pdf
8. Committee of Experts on Internet Intermediaries [MSI-NET] (2018). *Algorithms and Human Rights Study on The Human Rights Dimensions of Automated Data Processing Techniques and Possible Regulatory Implications* (DGI(2017)12). Strasbourg: Council of Europe. Downloaded 2021, March 25 from https://rm.coe.int/algorithms-and-human-rights-en-rev/16807956b5
9. Council of Europe (1952). *The European Convention on Human Rights.* Strasbourg: Directorate of Information. Downloaded 2021, October 16 from https://www.echr.coe.int/documents/convention_eng.pdf
10. Council of Europe (2019). *Declaration by the Committee of Ministers on the manipulative capabilities of algorithmic processes*. Strasbourg. Downloaded 2021, November 2 from https://www.coe.int/en/web/data-protection/-/declaration-by-the-committee-of-ministers-on-the-manipulative-capabilities-of-algorithmic-processes
11. European Commission's High-Level Expert Group on Artificial Intelligence [AI HLEG] (2018). *A Definition of AI: Main Capabilities and Scientific Disciplines*. Brussels: European Union. Downloaded 2021,

October 22 from https://ec.europa.eu/futurium/en/system/files/ged/ai_hleg_definition_of_ai_18_december_1.pdf
12. Gillespie, T. (2014). The Relevance of Algorithms. In: Gillespie T, Boczkowski, P. J. & Foot, K. A. (eds.), *Media Technologies: Essays on Communication, Materiality, and Society* (pp. 167–193). Cambridge, Massachusetts: Massachusetts Institute of Technology
13. Helberger, N., Eskens, S., van Drunen, M., Bastian, M. & Moeller, J. (2020). *Implications of AI-driven Tools in the Media for Freedom of Expression*. Conference of Ministers responsible for Media & Information Society, Nicosia, Cyprus. Downloaded 2021, May 10 from https://rm.coe.int/cyprus-2020-ai-and-freedom-of-expression/168097fa82
14. Hu, X., Neupane, B., Echaiz, L. F., Sibal, P. & Lam, M. R. (2019). *Steering AI and Advanced ICTs for Knowledge Societies: A Rights, Openness, Access and Multi-stakeholder Perspective*. Paris: UNESCO Publishing. Downloaded 2021, March 4 from https://unesdoc.unesco.org/ark:/48223/pf0000372132
15. Kaye, D. (2018). *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression* (A/73/348). New York: United Nations General Assembly. Downloaded 2021, March 24 from https://ap.ohchr.org/documents/dpage_e.aspx?si=A/73/348
16. Kostić, B. (2021). *Vještačka inteligencija: uticaj na slobodu izražavanja, medijske perspektive i regulatorni trendovi* [*Artificial Intelligence: The influence on freedom of expression, media perspectives and regulatory trends*]. Belgrade: Organization for Security and Co-operation in Europe. Downloaded 2021, October 26 from https://www.osce.org/sr/mission-to-serbia/479672
17. Liao, S. M. (2020). A Short Introduction to the Ethics of AI. In: Liao S. M. (ed.), *Ethics of AI* (pp. 1–42). Oxford: Oxford University Press
18. Nguyen, T. T., Hui, P. M., Harper, F. M., Terveen, L. & Konstan, J. A. (2014). Exploring the Filter Bubble: The Effect of Using Recommender Systems on Content Diversity. *Proceedings of the 23rd International Conference on World Wide Web* (pp. 677–686). DOI: 10.1145/2566486.2568012
19. Pariser, E. (2011). *The Filter Bubble: What the Internet is Hiding from You*. London: Penguin Books
20. Price, D. (n.d.). *Infographic: How Much Data is Produced Every Day?* CloudTweaks. Downloaded 2021, October 21 from https://cloudtweaks.com/2015/03/how-much-data-is-produced-every-day/
21. The Royal Society (2017). *Machine Learning: the power and promise of computers that learn by example.* Downloaded 2021, October 21

from https://royalsociety.org/~/media/policy/projects/machine-learning/publications/machine-learning-report.pdf
22. Sartor, G. & Lagioia, F. (2020). *The impact of the General Data Protection Regulation (GDPR) on artificial intelligence*. Directorate-General for Parliamentary Research Services of the Secretariat of the European Parliament. Brussels: European Union. DOI: 10.2861/293
23. Simonite, T. (2018). When It Comes to Gorillas, Google Photos Remains Blind. *Wired*, November 1. Downloaded 2021, October 20 from https://www.wired.com/story/when-it-comes-to-gorillas-google-photos-remains-blind/
24. Sunstein, C. R. (2017). *Republic: Divided Democracy in the Age of Social Media*. Princeton and Oxford: Princeton University Press
25. UN Human Rights Committee (2011). *General Comment No. 34 Article 19: Freedoms of opinion and expression*. Geneva, Switzerland. Downloaded 2021, November 1 from https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf
26. UN Human Rights Council (2021). *The promotion, protection and enjoyment of human rights on the Internet* (A/HRC/47/L.22). New York: United Nations General Assembly. Downloaded 2021, November 1 from https://undocs.org/A/HRC/47/L.22
27. United Nations (1966). *International Covenant on Civil and Political Rights. Treaty Series, 999*. Downloaded 2021, October 16 from https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx
28. United Nations (1948). *Universal Declaration of Human Rights. United Nations General Assembly*. Paris, France. Downloaded 2021, October 16 from https://www.un.org/en/about-us/universal-declaration-of-human-rights
29. York, J. C. & Zuckerman, E. (2019). Moderating the Public Sphere. In: Jørgensen R. F. (ed.), *Human Rights in the Age of Platforms* (pp. 137–161). Cambridge, Massachusetts: Massachusetts Institute of Technology
30. Zuiderveen Borgesius, F. (2018). *Discrimination, artificial intelligence, and algorithmic decision-making*. Strasbourg: Council of Europe. Downloaded 2021, September 23 from https://rm.coe.int/discrimination-artificial-intelligence-and-algorithmic-decision-%20making/1680925d73

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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.

Citing rules inside the manuscript

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.