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PROCEDURAL ASPECTS OF THE CONSTITUTIONAL REVISION IN THE FIELD OF JUDICIARY AND RESTRAINTS OF THE AUTHORITIES OF THE NATIONAL ASSEMBLY

ABSTRACT: The subject of this paper is an analysis of the procedure of the amendments to the "Mitrovdan" Constitution from the perspective of adherence to the procedure and protection of the constitutional continuity. Considering the multivalent effect of the constitutional revision on the strenghtening of the constitutional order, constitutional culture, and rule of law in an unique legal-political moment immediately following the proclamation of the Act on Amendments to the Constitution, but prior to the enactment of the set of judicial laws, the study aims to analyse whether the procedure of the constitutional amendment contributed to the furtherance of the constitutional democracy. The scope of the study is limited to a procedure, the sequence of formal acts following a prescribed procedure for the constitutional amendment, while the subject of the amendments is reflected upon only as it is necessary for understanding both the essence and context of the matter. It is indisputable that by adopting 29 amendments to the "Mitrovdan" Constitution and guaranteeing the independence of the judiciary and prosecution there was made an important step in the process of overcoming tensions between both the form and substance of the constitutional political culture. But, at the same time, there were

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some additional restraints of the authorities of the National Assembly. The process of improving the constitutional democracy, preserving the constitutional continuity, and building the constitutional culture of Serbia is analysed from a historical perspective, with a special reference to the procedure for adopting the 2006 Constitution. The methodological, historical-comparative approach is completed by analyzing the comments and interpretations of certain constitutional acts, laws, and bylaws. The additional value of the analysis stems from the methodological facts being interpreted from the perspective of a fifteen-year experience as a Member of Parliament, and a direct participant in the constitutional review process as a member of the Committee on Constitutional Affairs and Legislation of the National Assembly.

Key words: *Constitutional Revision, the National Assembly, "Mitrovdan" Constitution, Constitutional Democracy, Constitutional Political Culture.*

1. Introduction

Fourteen years following the proclamation of the 2006 Constitution (hereafter: "Mitrovdan" Constitution[1]), on its 10th session held on the 3rd of December 2020, the Government[2] confirmed and submitted to the National Assembly the Proposal for Amendment of the Constitution of the Republic of Serbia[3]: it is with that act that the process of partial constitutional revision was initiated, and the tradition of common constitutional changes continued. Namely, the modern constitutional and political history of Serbia was marked by the adoption of 16 constitutions, their duration was about 14 years, they were usually adopted for reasons of political necessity and not constitutional

[1] The National Assembly of the Republic of Serbia, on its Second Special Session held on the 8th of November 2006, adopted the Act of Proclamation of the Constitution of the Republic of Serbia, according to article 133 paragraph 3 of the Constitution of the Republic of Serbia and article 25 of the Law on Referendum and Citizens' Initiative.

[2] In paragraph 1 of article 203 of the "Mitrovdan" Constitution it is prescribed that the proposal for amending the Constitution may be submitted by at least one third of the total number of parlament deputies, the president of the Republic, the Government, and at least 150.000 voters.

[3] The proposed revisions regard article 4 of the Constitution of the Republic of Serbia and provisions of the Constitution regarding courts and public prosecutors, i.e. articles 142–165 of the Constitution, and consequently article 99 (powers of the National Assembly), article 105 (Decision-making in the National Assembly) and article 172 of the Constitution (election and appointment of Constitutional Court judges).

reason, and almost without exception, they were adopted with a lack of legitimacy, that is without adhering to the established revision procedure.

It shall be confirmed, that in the constitutional history spanning 187 years, the exemplary adherence to the procedure of revision for the "Mitrovdan" Constitution has guaranteed "the legality of the constitution, as an elementary perquisite of a constitutional state" (Pajvančić, 2005, p. 10) and has furthered the process of constitutionalisation in a sense that the exercise of state powers "assumes the existence of effective institutions for limitations, whithout which the rule and power of individuals, groups, states – has always shown a tendency to be abused" (Fridrih, 1996, pp. 52–53).

When mentioning the field of government restrictions, one of the reasons for changing the "Mitrovdan" Constitution is to improve the standard of respect for the rule of law, i.e., respect for consistently regulated and implemented division of power, guarantees of judicial and prosecutorial independence, and the judicial protection of constitutionally guaranteed human rights and freedoms.

With the initiation of the constitutional revision process, citizens, as the bearers of sovereignty, were given the opportunity to participate in creating and reaching a basic consensus on the fundamental values of the community in which they live. In a way, it was a once-in-a-lifetime opportunity to ensure democratic legitimacy of the whole process through active participation in public debates[4], of which eleven public hearings were held on the topic of "Amendment of the Constitution of the Republic of Serbia in the field of justice" from the 29th of April to the 17th of September 2021. Numerous civil and professional associations were involved in the public debates to formulate the best possible solutions and raise public awareness of the importance of constitutional changes and participation in the referendum.

In a partial constitutional revision (Pejić, 2018, p. 70)[5] twenty nine articles of the "Mitrovdan" Constitution were amended in accordance with the procedure provided for in Article 203, and thus one segment of the

[4] On April 16, 2021, the Committee on Constitutional Affairs and Legislation of the National Assembly decided to initiate activities in the process of amending the Constitution, which are within the competence of the Committee, primarily concerning conducting various forms of debates on constitutional changes, for different opinions and suggestions to be heard.

[5] The concept of constitutional revision may be understood in two ways: as a revision in the formal sense and a revision in the material sense, with both processes present at the same time, but the former is most often defined as "constitutional revision" and the latter as "constitutional reform."

sought-after changes that have been discussed practically since the entry into force of the Constitution were completed.

Namely, since the adoption of the "Mitrovdan" Constitution, it has been criticized by both domestic and international experts, and in the field of the judiciary, a key objection was expressed in the view that constitutional provisions leave too much room for legislative and executive power to influence judicial office, leading to the unwanted politicization of the judiciary.[6] Serbia, which has reached the status of a European Union (EU) candidate country with entry into force of the Stabilisation and Association Agreement[7] (SAA), has initiated constitutional amendments in accordance with Article 72 (3) and Article 80 of the SAA, which provides for special attention to be committed to strengthening the independence of the judiciary and improving its efficiency, as in line with article 14 of the Negotiating Framework,[8] which emphasizes that judicial reform – in terms of improving its efficiency and independence – is a key precondition for the effective implementation of EU acquis. Along with the reports of the European Commission (EC) on Serbia's progress in the process of European integrations, the opinions of the European Commission for Democracy through Law of the Council of Europe (Venice Commission) are of special importance, of which during the 2007[9]–2021 period a total of four opinions were drafted on necessary changes to the Constitution: in March 2007, concerns were already expressed about the "excessive role of parliament in appointing to the judiciary" (Opinion No. 405/2006) the following one in the year 2018 (Opinion No. 921/2018) and in 2021 the Venice Comission submitted two urgent opinions on two Draft Acts on amending the Constitution, one on the 18th of October (Opinion No. 1027/ 2021, No. 1047/2021) and one on the 19th of November (Opinion No. 1027/2021, No. 1067/2021).

The necessity of Constitutional revision in the part related to the judiciary was confirmed in the National Strategy for Judicial Reform for the period from

[6] Article 99, paragraph 2, item 3 stipulated that the National Assembly, within its electoral rights, elect the President of the Supreme Court of Cassation, presidents of all courts, the Republic Public Prosecutor, all public prosecutors, judges and deputy public prosecutors.

[7] 1st of September, 2013.

[8] Adopted at the First Intergovernmental Conference on the 21st of January, 2014, when negotiations on Serbia's accession to the EU were launched.

[9] For the sake of precision, we must remind that before the adoption of the final text of the "Mitrovdan" Constitution, several drafts were the subject of public debate. In June 2005, the Venice Commission was asked to give an opinion on the draft's chapter on Justice from the Draft approved by the Government of the Republic of Serbia. Some of the recommendations from the submitted Opinion of the Venice Commission have been incorporated into the final text of the Constitution, but a large number of criticisms have not been taken into account.

2013 to 2018[10] as well as the Strategy for the Development of the Judiciary for the period 2020–2025, which was adopted by the Government on the 10th of July 2020. The legal analysis of the constitutional framework on the judiciary in the Republic of Serbia[11] has been concluded with the aim to adequately define the constitutional guarantees which make up the *de iure* framework of the independence of the judiciary within the system of the rule of law. Both in the first[12] and in the revised[13] action plan for Chapter 23, the first transitional criterion 1.1.1 is the adoption of new constitutional provisions concerning the independence of the judiciary, bearing in mind the "recommendations of the Venice Commission, in line with European standards and based on a extensive and comprehensive consultation process".

2. The legitimation potential of the revision procedure for the "Mitrovdan" Constitution

The theoretical consideration of the causal influences of the value, constitutional and procedural field raises some important questions:[14] did the revision procedure of the "Mitrovdan" Constitution contribute to the improvement of constitutional democracy (Podunavac, 2006, pp. 97–104)[15] and did it represent a departure from undoubtedly problematic experiences that are not lacking in our constitutional history?

We are of the opinion that the very fact that the revision followed the constitutionally prescribed procedure ensured constitutional continuity as an important principle of democratic constitutionalism and preservation of political stability, democratic institutions and legitimacy (Dimitrijević, 2017, p. 227).[16] Moreover, respect for the procedure of changing the constitution is not only a measure of the success of constitutional consolidation, but also a

[10] The National Strategy, adopted by the National Assembly on 1 July 2013, envisages five basic principles of judicial reform: independence, impartiality, expertise, accountability and efficiency.

[11] The working group for the analysis of the changes to the constitutional framework held its first meeting on the 30thof January 2014 in the building of the Supreme Court of Cassation.

[12] Adopted by the Government on the 27th of April 2016.

[13] Adopted by the Government on the 10th of July 2020.

[14] Of course, the question is whether there are "inherent values of certain political and constitutional orders as well as whether there are political values and goals that can be achieved within a particular constitutional order?"

[15] For Tocqueville, democracy is not only a form of government "but also a special form of political culture and social (democratic) learning."

[16] The text of the constitution is important "only if it is accompanied by a practice called constitutionalism."

measure of the legitimacy of the entire constitutional order, the fulcrum of the constitutionalization process (Molnar, 2013, p. 21).[17]

The concise statement to which "constitutional regulations should have the force of the highest national laws" (Jovanović, 1924, p. 72), from which consistently follows that any revision of the constitution must be raised from the framework of the regular legislative procedure, because the supremacy of the constitution can be guaranteed only if it cannot be changed by "ordinary laws" (Györfi, 1998, p. 139) is, however, followed by a dilemma: how to balance the procedure in a way that allows the tension between democracy, order and constitutionalism to be overcome and the "necessary changes to be adopted so as not to disrupt constitutional stability and predictability" (Selected documents of the Venice Comission, 2020, p. 10).

The easier procedure of revision in relation to the 1990 Constitution has been held as one of the positive aspects of the "Mitrovdan" Constitution. The 1990 Constitution (alongside the 1888 Constitution of the Kingdom of Serbia), held as "normatively the highest range of our constitutionality" by a number of authors (Petrov, 2020, p. 13), belongs to the category of extremely firm constitutions (Ferrajoli, 2012, p. 43)[18] as it stipulates that an act amending the constitution must be supported by a two-thirds majority of the total number of deputies as well as a majority of the total number of voters on referendum (articles 132–134).[19] The reason for this, as emphasised by constitutional drafter Ratko Marković, that a firm procedure "preserves the dignity of the constitution as a legal act of supralegal legal force" (Simović, 2017, p. 620).

The process of adopting the "Mitrovdan" Constitution in 2006 did not meet the criteria of either procedural or substantive legitimacy, it was written in a hurry "at the end of summer and adopted even more hurried at the beginning of fall, under the pretext that in that way Kosovo and Metohija would be 'saved' within the borders of Serbia" (Molnar, 2010, p. 13), the general opinion being "that such a procedure did not correspond to the tradition created during the one-party system, nor to the general attitude of the Serbian public policy during its history" (Fira, 2007, p. 31). Institutions responsible

[17] "In relation to constitutional consolidation, constitutionalization is a much broader concept and refers to the constitution in its full meaning, i.e., to the constitutional order or constitutional system."
[18] "Firmness, in other words, binds the hands of modern generations to prevent the amputation of the hands of future generations."
[19] A complex procedure for its amendment was envisaged: 1) two votes in the Assembly and a two-thirds majority of the total number of deputies for the amendment of each constitutional provision; 2) obligatory constitutional referendum in which it was necessary for most of the total number of voters registered in the voter list to vote "yes" for the change of the Constitution.

for its preparation were excluded from the constitutional process, deputies received the constitutional text on the day of its adoption and were denied opportunity to participate in the debate. The new constitution was adopted "during an emergency session of the National Assembly, which was renamed the day before the adoption of the constitution into a "special session" – a type of session unknown to the Serbian constitution" (Pajvančić, 2007, p. 26). The Constitution was adopted unanimously, with 242 deputies present and sent to a referendum (Petrin, 2007, p. 75).[20] The referendum was held for two days: 28th and 29th Of October 2006 (Analysis of irregularities during the referendum, 2006, p. 5) 21 with 54,91% of voters participating on the referendum and 53,04% of the citizens of Serbia voting in support of Constitution according to the Republic Electoral Comission (REC) (Stojiljković, 2007, p. 19).

Pursuant to the provisions of Article 203 of the "Mitrovdan" Constitution, the National Assembly decides on the proposal to change the Constitution by a two-thirds majority of the total number of deputies, and by adopting the proposal, the drafting or consideration of the proposal for an act amending the constitution is commenced. Article 15, paragraph 1, item 1 of the Law on the National Assembly (entered into force 2010) also stipulates that the National Assembly, as the holder of the constitutional and legislative power, adopts and amends the Constitution. The amendment of the Constitution, according to Article 53 paragraph 1 of the aforementioned law, shall be regulated by the Rules of Procedure of the National Assembly (entered into force 2012) which in its Article 48 paragraph 1 stipulates that the Committee on Constitutional Affairs and Legislation considers the proposal for amending the Constitution and the proposed Act on Amendments to the Constitution, and in paragraph 2 stipulates that the Committee prepares the proposed Act on Amendments to the Constitution and a proposal for a constitutional law for the implementation of the Constitution.[22]

[20] The referendum was called based on the Decision on calling a national referendum to confirm the new Constitution of the Republic of Serbia, and the wording of the referendum question was: "Are you in favor of confirming the new Constitution of the Republic of Serbia?"

[21] At the end of the first day of voting, 17.5% of registered voters turned out on the referendum, while on the second day, in the late afternoon, the percentage was around 26%, followed by a sharp leap in turnout upto 41.9% at 5 pm.

[22] The Committee on Constitutional Affairs and Legislation considered the Proposal for Amendments to the Constitution of the Republic of Serbia at its session on the 6th of May 2021 and determined that the Proposal was submitted by the constitutionally authorized proposer in the prescribed form and sent a report to the National Assembly. At the Fourth Special Session on June 7, 2021, the National Assembly adopted the Proposal for revision of the Constitution of Serbia in its part concerning justice.

The extent to which the process of revising the "Mitrovdan" Constitution marked the political life of Serbia is confirmed by the fact that the previous, Eleventh Convocation of the National Assembly (2016–2020), almost completely implemented the constitutional revision procedure but did not complete it. Namely, in November 2017, the Ministry of Justice, approaching the realization of the first task from the Action Plan for Chapter 23, asked the Venice Commission for help in drafting constitutional amendments related to the judiciary. At the end of January 2018, the draft amendments to the Constitution of Serbia in the field of justice were published on the website of the Ministry of Justice for the purposes of public debate, and four round tables were organized for this purpose.[23] Following the opinion of the Venice Commission on Draft Amendments I-XXIX (the Commission voiced 44 criticisms and recommendations for the substantial change of 29 constitutional amendments), in September 2018, the Ministry determined the third version of the Draft Amendments I-XXXII, and in mid-October 2018, the fourth version of the Draft Amendments I-XXXII were set. In November 2018, the Government submitted an initiative to the National Assembly to amend the Constitution, and the Committee on Constitutional Affairs and Legislation approved this initiative in June 2019.

The proposal made by the Ministry of Justice in 2018, which considered the recommendations of the Venice Commission, was used by the Working Group of the Committee on Constitutional Affairs and Legislation, which worked on drafting constitutional amendments in June and July 2021.

It is indisputable that in relation to the revision procedure prescribed by the 1990 Constitution, the procedure for amending the "Mitrovdan" Constitution is less demanding: the obligation to vote in the constitutional referendum is not prescribed in case of change of each of the 206 articles, and in the case when the obligation of referendum is prescribed, it is not accompanied by the requirement of minimum turnout and positive vote of at least 50% of the electorate, and pursuant to Article 203 paragraph 8, the amendments to the Constitution are adopted if a majority of the voters voted in favor of the amendments in a referendum. However, we must not forget that "out of the total 206 articles of the Constitution, a referendum is necessary to change 153 articles, but a referendum may also be requested to modify the remaining 53 articles" (Molnar, 2010, p. 13).

The adoption of the new Law on Referendum and Citizens'Initiative (Law, 2021), albeit with a 13-year delay in relation to the obligation established

[23] 5th of February in Belgrade, 19th of February in Kragujevac, 26th of February in Niš and 5th of March in Novi Sad.

by the Constitutional Law for the Implementation of the Constitution of the Republic of Serbia, was an important intermediate step in organizing the constitutional referendum. Since the "Mitrovdan" Constitution deleted the 50% turnout quorum, the Referendum Law, which was in force from 1994 to 2021, provided that a referendum was valid if a majority of eligible voters entered into the voter list voted in favor, while the new law stipulates, in accordance with the "Mitrovdan" Constitution, that a decision in a referendum is made if the majority of citizens who voted in a specific the territory for which the referendum was called voted for it. The constitutional referendum was called by the Decision of the National Assembly for calling a republic level referendum to confirm the Act on Amendments to the Constitution of the Republic of Serbia, based on Article 203, paragraph 7 of the Constitution and Art. 13 and 18 of the Law. Without the adoption of the new Law, the constitutional referendum would be practically unenforceable, since the new solutions not only abolished the exit clause, but also specified the provisions which, in accordance with the Constitution and international standards, regulated: circle of authorized proposers of a referendum, electronic collection of signatures, court jurisdiction, financing, reporting and implementation of the referendum campaign and citizens'initiative, obligations of the bodies in these proceedings...

Contrary to criticism, we believe that the harmonization of the Law with the "Mitrovdan" Constitution was an important segment of respecting the procedure of changing the constitution and preserving constitutional continuity, because the law as an act of less legal force than the Constitution could not determine the quorum in a constitutional referendum, when that quorum was abolished by the "Mitrovdan" Constitution.

3. Limiting the competences of the National Assembly

The process of constitutional revision also opened the topic of constitutional and legislative supremacy of the National Assembly. Namely, although it is prescribed that the National Assembly, as the bearer of constitutional and legislative power, adopts and amends the Constitution, in the process of European integration the sovereignty of states is relativized (Kuljić, 2018, p. 24)[24] and in the process of taking over and implementing primary and secondary

[24] "Already at the end of the 20th century, the new EU discourse, not with a simple guidance, but with a decreed binding force, prescribes the basic framework of analysis, the value criteria of the new vision of progress and its indicators."

sources of the *acquis communautaire*, a significant part of national legislation is harmonized, not only substantively but also procedurally, in accordance with the standards and recommendations of the European institutions (Slavnić & Majhenšek, 2011, p. 2).[25] The process of constitutional revision of the "Mitrovdan" Constitution only confirmed the view that national parliaments are the "institutional losers of membership in the Union" (Horváth, 2010, p. 128), and that the whole spectrum of classical and new limitations of the constitutional and legislative function of the National Assembly leads not only to the limitation of competencies, but also in the case of changes in the field of justice and self-disempowerment. After the constitutional revision, the election of all judges, presidents of courts and the president of the Supreme Court is transferred from the National Assembly to the High Court Council, and the election of chief public prosecutors and public prosecutors to the High Prosecutorial Council, furthermore the High Court Council does not include the President of the competent committee of the National Assembly, nor the Minister of justice. By deleting paragraph 2 of Article 146 of the Constitution, the National Assembly was stripped of another of its competencies, namely, judges and prosecutors are no longer elected in the first term for three years because, in accordance with the principle of permanence, the judicial function lasts from election until the end of each judge's working life.[26]

Seeing as the corpus of EU legal provisions, regulations, and directives represent "the limits of legislative independence and the bulwark of the activities of the National Assembly" (Pastor, 2018, p. 236), and considering the fact that the Venice Commission was actively involved in the process of constitutional changes practically from the preparations for the adoption of the "Mitrovdan" Constitution in 2005 to the amendment of 29 provisions in the field of justice in 2022, confirms the eternal actuality of the question of

[25] "The European Union suggests to candidate countries such a model of harmonization of law according to which EU law can be transposed into national legislation by the method of reformulation, as the primary and basic method of harmonization."

[26] Constitutional changes limit the competencies of the National Assembly to the election of four members of the High Court Council and the High Prosecutorial Council, as well as the election of the Supreme Public Prosecutor (Article 99 paragraph 2 item 3). Pursuant to Article 151, paragraph 1, the HCC has eleven members, and the number of those directly elected by the National Assembly has been reduced from eight to four, while the remaining six members will be elected by judges; the eleventh member of the HCC is the President of the Supreme Court. If the National Assembly does not elect all four members of the HCC (Article 151, paragraph 5) and the HPC (Article 163, paragraph 6), or the Supreme Public Prosecutor (Article 158, paragraph 3) within the deadline set by law, they will be elected by a commission consisting of the President of the National Assembly, the President of the Constitutional Court, the President of the Supreme Court, the Supreme Public Prosecutor and the Protector of Citizens.

Abbé Sieyès: whether the constitutional power is really constituent and not limited by anything?

The topic of limiting the competencies of the constitutional and legislative body not only raises the issue of limiting the power and influence of parliament and the distribution of competencies among branches of government, but also calls into question the foundations of the functioning of modern representative democracies. Namely, with the persistence of the provision from Article 145 of the Constitution, according to which court decisions are made on behalf of the people (which we consider correct), one should be aware that the self-disempowerment of the National Assembly jeopardizes the realization of two fundamental principles – the principle of citizens' sovereignty and legitimacy. Namely, according to Article 2, paragraph 1 of the Constitution, sovereignty originates from citizens who exercise it directly through referendums and citizens' initiatives and indirectly, through their freely elected representatives. By excluding the National Assembly from the process of electing judges, the connection between the citizens who are the bearers of sovereignty, the deputies who are the legitimate representatives of the citizens and the judges who make decisions on behalf of the people is lost. For the past sixteen years, within its competences, the National Assembly, in its capacity as a collective state body consisting of freely elected representatives of sovereignty holders, has elected judicial office holders who have proclaimed judgments on behalf of the people. How can we talk about the legitimacy of court judgments made on behalf of the people, when the decision-makers are not elected by freely elected representatives of the people, but by a narrow circle of colleagues? And if the judiciary is one of the three branches of government, what is the spurce of legitimacy of judges if not the people through their freely elected representatives?

And last but not least, we remind you that in addition to the normative and control function and the right of the parliament to regulate its own organization, its electoral function is of special importance. The electoral rights of the National Assembly prescribed by Article 99 paragraph 2 of the Constitution[27]

[27] After the constitutional revision, Article 99, paragraph 2 of the Constitution narrowed the electoral competence of the National Assembly as follows: 1. it elects the Government, supervises its work and decides on the termination of the mandate of the Government and ministers, 2. it elects and dismisses judges of the Constitutional Court, 3. it elects four members of the High Court Council, four members of the High Prosecutorial Council and elects the Supreme Public Prosecutor and decides on his termination from office, 4. elects and dismisses the Governor of the National Bank of Serbia and supervises his work, 5. elects and dismisses the Protector of Citizens and supervises his work, 6. elects and dismisses other officials determined by law.

represent an important mechanism of liberal-democratic institutional design. By limiting the electoral function of the National Assembly, the provision of Article 4 paragraph 3, that the relationship between the three branches of government is based on mutual verification and balance, is also called into question (Stanovčić, 2015, p. 132).[28]

In general, we witness that the process of limiting the competences of the National Assembly takes place under the auspices of Eurobureaucratic new discourse and the ubiquitous mantra (Kuljić, 2018, p. 22)[29] of the rule of law, without precisely defined criteria (Logarušić, 2021, p. 47)[30] according to which EU institutions determine "whether certain member states take sufficient account of the principles of the rule of law and respect for human rights when adopting their constitutions or adopting individual laws" (Pastor, 2018, p. 237). At the same time, there are no generally accepted standards and models within the EU itself for proposing, electing, or appointing judicial office holders, so the revision of the "Mitrovdan" Constitution took place on a fluid horizon of value expectations and harmonization of new constitutional solutions with vaguely defined EU standards (Venice Commission Selected documents, 2020, pp. 163–165).[31]

Following the prescribed procedure, the Committee on Constitutional Affairs and Legislation of the National Assembly held a total of 15 sessions (in the period from the 16th of April to the 29th of November 2021) at which

[28] "Constitutionalization must be viewed in the broader context of the rule of law, which in essence includes other principles, such as separation of powers, an independent judiciary without whose action and independence essential goals such as constitutionality and legality and the rule itself rights cannot be achieved."

[29] "The hegemony of certain concepts should be understood not only as an internal scientific reaction but also because of a new social context, i.e., the relationship of forces that impose them."

[30] "Precisely established criteria require respect for research principles: objectivity, reliability, systematicity and precision." Without precisely defined criteria, the rule of law is transformed into a means of discrediting and disciplining, e.g., Poland, Hungary.

[31] There is a wide range of different models for nominating, electing and appointing judges in the EU: 1. by direct election (a very rare case that exists in Switzerland, at the cantonal level), 2. elections in the assembly (judges are elected like this in Switzerland at the federal level, in Slovenia, and in Spain, the House of Representatives nominates future judges by a three-fifths majority, while the appointment of judges is the king's authority), 3. direct appointment by the head of state on the recommendation of the Judicial Council (Czech Republic, Greece, Ireland, Lithuania, in the Netherlands on the recommendation of a court whose judges are elected through the Judicial Council, and in Italy the President is also President of the Judicial Council), 4. appointments by the Government (Sweden) and in Malta, on the recommendation of the Head of Government; 5. combined appointments made by the head of state and government, e. g., the Dutch Minister of Justice is politically responsible for appointments by royal decree and also signs appointments, 6. directly by a judicial council (Italy, Portugal, Croatia).

it was decided to form a Working Group to draft a proposal to amend the Constitution and the Constitutional law for the implementation of the Constitution; determined the text of the act which the National Assembly submitted to the Venice Commission for opinion;[32] Committee members spoke with representatives of the Venice Commission; the proposed changes were discussed with representatives of the non-parliamentary opposition; determined the question[33] on which the citizens will vote in a referendum and sent a request to the REC for an opinion; the Proposal of the Act on Amendments to the Constitution with Explanation, the Proposal of the Constitutional Law for the Implementation of the Act on Amendments to the Constitution as well as the Proposal of the Decision on Calling a Referendum to confirm the Proposal of the Act on Amendments to the Constitution were determined.

On the 30th of November 2021, at the Eighth Special Session of the National Assembly in the Twelfth Convocation, the Draft Act on Amendments to the Constitution, the Draft Constitutional Law on the Implementation of the Act on Amendments to the Constitution and the Draft Decision on Calling a Referendum to confirm the Draft Act on Amendments to the Constitution were adopted by 193 deputies. A referendum for the 16th of January 2022 was also called at the Eighth Special Session. The REC declared the overall results of the referendum on the 4th of February 2022: according to the Report on the Overall Results of the Referendum conducted to Confirm the Act on Amendments to the Constitution of the Republic of Serbia the number of voters who voted for the answer "yes" was 59.62% and those who voted "no" was 39.35%, and on the 9th of February 2022, on the Tenth Special Session of the National Assembly in the Twelfth Convocation, the Act on Amendments to the Constitution and the Constitutional Law on the Implementation of the Act on Amendments to the Constitution were promulgated.

Assessing the constitutional review process, the EC Report for 2021 states that limited progress has been made and a certain level of preparedness reached in the Serbian judicial system, and that after the adoption of the constitutional amendments "a thorough overhaul of the system for appointing judges and

[32] The Committee on Constitutional Affairs and Legislation sent to the Venice Commission for opinion Draft Amendments I–XXIX to the Constitution of the Republic of Serbia on the 23rd of September 2021, and the Speaker of the National Assembly wrote a letter to the Venice Commission on the 26th of October 2021 asking for another urgent opinion on Draft Constitutional Amendments I -XXIX.

[33] "Are you in favour of confirming the Act on Amendments to the Constitution of the Republic of Serbia?"

prosecutors and evaluating their work is needed to enable employment and skills-based advancement, as the current legal framework is not a sufficient guarantee against potential political influence on the judiciary" (EC, 2021, p. 5).

4. Conclusion

The multi-year process of preparation of constitutional changes, only in the period from 2018 to 2021 seven draft constitutional amendments were considered and 15 public hearings were held, even considering all the shortcomings and objections that accompanied the constitutional review process, represented a procedurally correct and transparent legal-political effort to bring the basic values, institutions and principles of Serbia as a state and political community into a balanced relationship.

We must constantly keep in mind to analyze the real legal-political context of Serbia, that there is no ideal constitutional paradigm, that constitutional guarantees can alleviate the gap between formal and essential independence and autonomy in the judiciary, but not eliminate it. Only time will show whether the provision of Article 2 of the Constitutional Law on the Implementation of the Act on Amendments to the Constitution of the Republic of Serbia, which stipulates that the Law on Judges, the Law on the Organization of Courts, the Law on the Public Prosecutor, the Law on the High Court Council and The Law on the State Council of Prosecutors shall be harmonized with the Amendments within one year from the day of its entry into force, and all other laws within two years.

It is indisputable that on the one hand, the adoption of 29 amendments to the "Mitrovdan" Constitution in the field of justice was an important step in the process of overcoming tensions between the form and content of constitutional political culture, but on the other hand, limiting the competences of the National Assembly in the field of representative democracy was a step backwards.

The analysis of complex, multi-year, multi-stage and multidimensional processes that resulted in the adoption of Amendments I-XXIX to the "Mitrovdan" Constitution showed that the process of partial constitutional revision has the potential for democratic legitimacy, but only time will confirm the extent to which respecting constitutional continuity helped overcome tensions between democracy and constitutionalism, whether it strengthened the stability, legality and legitimacy of the political system, and the extent to which respect for constitutional continuity has led to the strengthening of constitutional democracy.

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PROCEDURALNI ASPEKTI USTAVNE REVIZIJE U OBLASTI PRAVOSUĐA I OGRANIČENJE NADLEŽNOSTI NARODNE SKUPŠTINE

REZIME: Predmet rada je analiza procedure promene Mitrovdanskog ustava iz perspektive poštovanja propisanog postupka i očuvanja ustavnog kontinuiteta. Budući da razmatramo viševalentni uticaj ustavne revizije na jačanje ustavnog poretka, ustavne kulture i vladavinu prava u jedinstvenom pravno-političkom trenutku, neposredno po proglašenju Akta o promeni Ustava a pre donošenja seta pravosudnih zakona, rad ima za cilj da istraži da li je procedura ustavne revizije doprinela unapređenju ustavne demokratije. Delokrug analize ograničavamo na proceduru, sled formalnih odluka koje prate propisani postupak za promenu Ustava, a sadržinom promena se bavimo samo u meri koliko je potrebno da bi se razumela suština i kontekst. Nesporno je da je usvajanjem 29 amandmana na Mitrovdanski ustav i garancijom nezavisnosti sudstva i samostalnosti tužilaštva, učinjen važan korak u procesu prevladavanja napetosti između forme i sadržine ustavne političke kulture ali su istovremeno i dodatno ograničene nadležnosti Narodne skupštine. Proces unapređenja ustavne demokratije, očuvanje ustavnog kontinuiteta i izgradnju ustavne kulture Srbije analiziramo u istorijskoj perspektivi, sa posebnim osvrtom na proceduru donošenja Ustava iz 2006. godine. Metodološki, istorijsko-komparativni pristup zaokružujemo analizom komentara i tumačenja određenih ustavnih, zakonskih i podzakonskih akata. Dodatna vrednost analize proizilazi i iz činjenice da metodološka saznanja tumačimo iz rakursa 15-godišnjeg iskustva narodnog poslanika i neposrednog učesnika u procesu ustavne revizije u svojstvu člana Odbora za ustavna pitanja i zakonodavstvo Narodne skupštine.

***Ključne reči**: ustavna revizija, Narodna skupština, Mitrovdanski ustav, ustavna demokratija, ustavna politička kultura.*

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BLOCKCHAIN TECHNOLOGY AND MONEY LAUNDERING

ABSTRACT: In this paper, we want to break down certain prejudices against new blockchain technologies and cryptocurrencies, especially the Bitcoin, as instruments having mostly negative connotations and representing an opportunity for various criminal activities, including the cases of money laundering where money has been acquired in unethical and illegal ways. According to that aim, there were applied the methods of genetic, structural and functional analysis, the method of correlative variations, as well as the analogous and normative method. A significant part of the paper is dedicated to an introduction to DLT – (Distributed Ledger Technologies), i.e. a distributed book of records technologies, on which the blockchain and its most important exponent – the Bitcoin – rests. Also, we had to touch upon the second most important contribution to this technology, namely the Ethereum blockchain, which expands the perspectives opened by the Bitcoin, and thus the possibilities for misuse of this technology, primarily due to its constitutive principle of anonymity. In the paper, we have shown the fact that despite inadequate legislation, both nationally and globally, the blockchain and cryptocurrencies have not significantly supported the paths of illegal money laundering, especially not related to serious crimes, in particular drug trafficking and terrorism. We mostly see the contribution of this paper in the typologization of possible

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money laundering procedures, especially by using the NFT (Non-Fungible Tokens), non-exchangeable tokens whose hype, in last two years, might be the result of a perceived opportunity for a new way of money laundering. We conclude that we should not be afraid of the Bitcoin, but it should be accepted as an integral part of a peaceful and prosperous futurity for it opens new perspectives for humanity burdened with bigger problems than money laundering, which had existed to the same degree even before the appearance of the Bitcoin.

Keywords: *The Bitcoin, money laundering, Distributed Ledger Technologies, algorithm, the Ethereum*

1. Introduction

Our old institutions, like the law, haven't evolved to keep pace with the rate of change (brought about by technology).

Google CEO Larry Page

The dynamic growth of the technology industry, which is becoming decentralized and global, is increasingly at odds with current national legislations aimed at providing people with legal certainty, as one of the primary principles of law.

The emergence of new technology called Blockchain can radically modify the way we think about legal norms and redesign basic concepts of law. Especially those concerning the issue of jurisdiction of courts "to guarantee the defence of the rights and interests of citizens, protected by law", and the issue of territoriality "in which the State exercises its power by attributing internal jurisdiction to facts that happen under its territory" (Ferreira, 2021, pp. 2–3), so legal certainty could be achieved when using this new technology. Blockchain's feature, as a supranational decentralized concept of algorithmic validation of information (financial and other transactions without built-in regulatory principles), to come into conflict with national civil law systems, in which the Law refers to clear and coherent norms, makes it difficult to understand this phenomenon.

In recent years, cryptocurrencies have emerged as a new phenomenon in the global financial system. Since the first decentralized cryptocurrency, Bitcoin, was released into the hacking community by a mysterious person or an entity under the pseudonym Satoshi Nakamoto in 2009, the total value of cryptocurrency in circulation and the variety of different types of

cryptocurrencies have increased dramatically. At the time of writing this paper, the global market capitalization of cryptocurrencies has exceeded two trillion dollars, half of which goes to Bitcoin and Ethereum.

Cryptocurrencies are becoming a very important source of wealth through mining or skilful trading on virtual stock exchanges, as well as starting businesses on platforms that gather start-up capital through the Initial Coin Offer (ICO). There is also a wide range of companies that are directly or indirectly involved in the development of cryptocurrency markets, such as cryptocurrency stock exchanges and exchange offices (VCE – Virtual Currency Exchange) and companies in retail, banking, video games and computing sectors. The growth of such markets has increased the interest of investors so many include cryptocurrencies in their investment portfolios (Tesla, Microsoft, Facebook).

"For regulated financial institutions ("FIs"), the opportunities presented by cryptocurrencies and distributed ledger technology ('DLT') are tied to significant operational and regulatory challenges" (Holman & Stettner, 2018, p. 26), the most significant being the fight against money laundering and terrorist financing. Key aspects of the cryptocurrency ecosystem differ from previous Internet-based platforms, primarily in terms of the degree of centralization. The decentralized Peer-to-Peer network allows owners of Bitcoin and other cryptocurrencies to avoid key control factors in the global Anti-Money Laundering (AML) regime. "The potential for mutual anonymity among counterparties can frustrate the Know-Your-Customer ('KYC') and customer identification procedures ('CIP') on which existing AML regimes depend" (Holman & Stettner, 2018, p. 26).

Most technological ecosystems, such as DLT, do not have special liability regimes. Who will be responsible for the damage caused by a situation in which users are damaged for hundreds of millions of dollars, as in the case of hacking of VCE Live Coin in December 2020? Given that DLT is just a technology that does not have coded principles of law in it, this question is not easy to answer. A classic example, in this case, are smart contracts that the law treats like any classic contract or signature, and are created on a decentralized platform, with an anonymous administrator, run by a self-executing algorithm without the possibility of revocation.

To understand the real place of cryptocurrencies in the processes that enable the laundering of illegally acquired money, it is necessary to get acquainted with the DLT on which they are created and maintained. In this paper, we want to break down prejudices against new blockchain technologies and cryptocurrencies, especially Bitcoin, as instruments that have mostly

negative connotations and represent an opportunity for various criminal activities, including laundering of money acquired in unethical and illegal ways. To that aim, the methods of genetic, structural and functional analysis, the method of correlative variations, as well as the analogous and normative method were applied.

2. The term blockchain

Blockchain technology is based on the ability of the algorithm to reach consensus in a decentralized network without resorting to external authority to testify and conduct the transaction. As such, blockchain technology not only solves some technical aspects of the system but also touches on very important societal issues of "trust", "authority" and "consensus". If the mathematical algorithm allows no one to have special control over the network and the transactions that take place in it, then it acquires the status of a neutral (trustless) mechanism for any potential application, facilitating connections between people. More precisely, a "blockchain" is an immutable irreversible linear chain of cryptographically hashed "blocks" on which transactions are recorded. This linear history of time-stamped events is verified and stored in a decentralized DLT-based manner, and network nodes "witness" transactions and reach consent on which transactions are considered regular through a consensus "Proof of Work" algorithm. The ability to reach consensus on transactions algorithmically, and not through the external mediation of an authority or a third party, gives blockchain the name "trust machine" (Vigna & Casei, 2018). In this case, the code replaces the law, intermediary person, institution or authority, and cryptographic evidence[1] ensures the authenticity of the record and organizes consensus. In such a way, transactions take place directly between participants, bypassing the control of financial institutions, and most importantly, the very creation of money is determined and executed through an immutable protocol, and not through government or state intervention. In fact, Bitcoin was the first to break the basic deception of Modernity, based on Keynesian and Marxist ideas "that government needs to manage the money supply" (Ammous, 2018,

[1] Cryptographic proof is the ability to prove something with mathematical certainty. This is what, in his Bitcoin White Paper, Satoshi Nakamoto means by an electronic system based on cryptographic evidence instead of trust. Data integrity is checked by mathematical probability, not by trusting an authority or someone's word. Add a timestamp and it can be proven when a given record was made. Hash them together into a "chain" or a "tree" referring to the hash output of the previous record, and you have a linear history of proven secure records, "a new block in the chain" (Nakamoto, 2008).

p. 136), which proves its continued success and disruptive power that caused a turmoil in the world of finance. The creation of Bitcoin by mining is built into the code which, by determining the weight of mining, dictates the pace of currency emission. "Bitcoin can thus be understood as a technology that converts electricity to truthful records through the expenditure of processing power" (Ammous, 2018, p. 219), whereby it generates cryptocurrency as a reward to miners for the money invested in processing power (hardware) and electricity consumed. By monetizing the processing power, Bitcoin has in fact become the largest single-purpose computer network in the world. This way, a part of the internet community creates a currency that is liquid and parries traditional fiat currencies issued and controlled by states. Hundreds of respectable cryptocurrencies and thousands of tokens have been created in the wake of Bitcoin over the last decade, with very creative ideas and successful business ventures behind them.

Mining is one of the most important activities in creating cryptocurrencies. It is in fact a transaction verification competition in which incentives aim to deter potential attackers from the system, through a consensus-based process of the Proof of Work.[2] This implies the introduction of economic dynamics, i.e. cryptocurrency in network security engineering, an area of crypto-economy that relies on incentives for decentralized or distributed protocol designs. The difficulty of the computer problem that miners solve is set so that it is solved on average every ten minutes, and for their "work" miners are rewarded with cryptocurrency. At the same time, this determines the rate of Bitcoin creation in the network, until a total of 21 million Bitcoins are in circulation, which will happen in the middle of the 22nd century. The "consensus" reached by the consensus algorithm should not be misunderstood as a kind of agreement on the truth of the event, but rather as an incentive-driven settlement, the truth of which is decided by random attempts to consume CPU power. The "fairness" of the consensus algorithm, or rather its legitimacy, does not lie in negotiations, the consensus of opinion or some notion of justice or objective truth, but in coincidence and large numbers that create an operational consensus of computers online (Brekke, 2019).

[2] Proof of Work is one of the lesser-known aspects of bitcoin architecture. It is a form of cryptographic evidence, which uses hashing. Nodes in the Bitcoin network must do some "work" which allows them to verify the transactions being tracked and then group them into blocks and let them pass through the SHA-256 hashing algorithm to produce a valid output. This computer "work" of hashing transaction data to find a valid way out is called *mining*, which is associated with gold mining.

Public key cryptography ensures that the message cannot be intercepted and can only be read by its authorized recipient. Cryptographic hashing is used to create a set of keys: one that can encrypt (the public key) and the other that can decrypt (the private key that is kept a secret). The public key encrypts messages sent to the owner; the owner then uses the private key to decrypt the messages (Brekke, 2019). The main goal of Bitcoin is to build a network without the need to trust any authority, third party or intermediary, which it perceives as a security weakness, unnecessary cost and potential uncertainty.

3. Basic characteristics of blockchain sensibility

The Internet has enabled Google, Facebook, Amazon, and Apple to connect the world under their guardianship. Blockchain will enable the connection of the world under the guardianship of the participants.

Jon Choi, Ethereum, 2017.

Decentralization. Decentralization is part of the network culture and involves distributed systems resistant to any form of control, censorship or extinguishing by any authority. We can also call it disintermediation. Technically, peer-to-peer systems such as Bitcoin are made up of network participants who communicate directly with each other. Unlike server-to-client models, where servers hold and deliver content to different clients, they do not exist in peer-to-peer networks. There is an important difference between decentralization conceived in blockchain network protocols and decentralization as an ethical, political, social or economic goal or principle that such a protocol may or may not support.

Openness. In a decentralized system, no entity can prevent individuals from joining the network as it is possible with traditional institutions, thus specially constituting the idea of neutrality.

Trust. Decentralized and open systems imply a certain level of mistrust. It is ideal to reduce the amount of needed trust as much as possible, approaching complete distrust and security. Relationships based on trust never have an absolute degree of certainty of outcome. Bitcoin is 100% based on verification and 0% on trust (Ammous, 2018, p. 174).

Immutability. The Bitcoin chain of blocks must be immutable, to function autonomously outside the control of any external authority. It is based on the idea of immutable code that is performed exactly as it is written. Immutability ensures that the consensus on the state of the network, reached by the consensus protocol on Proof of Work, cannot be changed arbitrarily.

Privacy. Computer technology provides the opportunity for individuals and groups to communicate with each other in a completely anonymous way. Privacy is the power to selectively reveal yourself to the world online with the help of cryptography, which is especially important at a time when the Internet is being used as an infrastructure for mass surveillance and narrowing the field of freedom. In case of Bitcoin, which operates on a peer-to-peer payment system, instead of a third party keeping records of transactions, the entire network does so, making all transactions completely public. To preserve privacy in such a radically transparent system, the computers themselves remain anonymous.

Anonymity. Anonymity is closely related Bitcoin was initially considered anonymous and infamously became a means of payment for "Darknet" and Internet black markets. However, the transaction can be tracked today until the moment of exchange and be deanonymized at this time. To avoid that and to cover the trail with "dirty" coins, coin mixers are used to "mix" transactions so that they cannot be traced directly to certain owners. Also, advanced cryptography and zero-knowledge proofs have developed currencies with much stronger anonymity, such as Z-Cash, Monero and more recently Nim, which have been developed specifically for anonymity purposes.

4. Ethereum blockchain and tokenization

What has completely revolutionized the concept of decentralization is the launch of the Ethereum blockchain, or blockchain 2.0. With this concept, the Ethereum Blockchain has expanded the possibility of transactions to all types of value, not just monetary transactions. Ethereum is a general-purpose blockchain that can have different types of applications running on it. The contribution made by the Ethereum blockchain is reflected in three things: first, the concept of smart contracts, second, a new stage in the evolution of the Internet, namely WEB3.0, and third, decentralized autonomous organizations (DAO).

Smart contracts are computer programs that are able to enforce the terms of an agreement between the parties without the need for human coordination or intervention. Smart contracts can define rules, like a regular contract, and automatically enforce them with code when pre-defined conditions are met. Smart contracts are self-executing, cannot be deleted, and interactions with them are irreversible. They opened the possibility of automating aspects of contract law and business management. The way transactions are verified and added to the blockchain guarantees its reliability. Execution and verification

of smart contracts require transaction fees paid in ETH, which is called "gas". Ether (ETH) is therefore the original coin of the Ethereum platform and the Ethereum blockchain.

Through WEB 3.0 (decentralized WEB), which is on blockchain, therefore fully distributed to a huge number of computers, it is possible to create decentralized applications (dApps) that run in a distributed way without the possibility of censorship or downtime.

And finally, decentralized autonomous DAO organizations are organizations that operate through rules coded as computer programs, already described above, as smart contracts. Based on these rules, they perform actions for the benefit of shareholders. DAO is a computer algorithm that applies ownership rights over tokens, contractual obligations, and business logic rules. Token owners accumulate power and capital by founding organizations with their own money and thus have real decision-making power.

However, one of the most important advantages of Ethereum blockchain platform is "its ability" for everyone "to create unique tokens" that exist and run on Ethereum blockchain (Ali & Bagui, 2021, p. 53). Unlike currencies and cryptocurrencies, which represent a value, tokens give their owner special rights or rights in relation to the issuer or record the ownership of property. Encryption of these rights over the blockchain is called "tokenization". You do not need to create a blockchain from scratch to create tokens. Instead, some existing blockchains, such as Ethereum or LimeChain, provide templates that allow the publisher to create their tokens. The Ethereum blockchain uses ERC (Ethereum Request for Comment) standards. There are three categories of tokens based on their functionality: currency tokens, aid tokens, and investment tokens.

Initial Coin Offers (ICOs) typically use blockchain technology to offer so-called "tokens" that can give different rights to their owners. The company publicly issues crypto tokens in exchange for funds that resemble an initial public offer (IPO), in which the company offers securities to the public on the stock market. Unlike (IPO), ICO usually happens in the very early stages of a project. In 2018, the Russian platform and social network Telegram, with its ICO offer and GRAM token, collected $1.7 billion from investors around the world, while the EOS decentralized platform on the blockchain raised $4.2 billion in the same year.

As soon as the publisher finishes creating the token, the tokens can be advertised and sold. Each token issuer offers a certain value to Internet communities. It is a common market practice for an issuer to publish the so-called "white paper" on its website. Using smart contracts, any investor

around the world can exchange cryptocurrencies stored in his crypto wallet for new tokens. The advertising campaign relies primarily on social media channels, especially Twitter.

ERC-20 the standard allows easy creation, use and exchange of tokens based on Ethereum. ERC can be created by anyone, but it is up to the creator to clearly explain the standard to get the support of the internet community for their business idea.

The ERC-721 standard allows the creation of unexchangeable tokens. In this standard, each token is special and irreplaceable, has individual ownership and can be tracked separately online. These are the so-called NFT (Non-Fungible Tokens), which have revolutionized the crypto market in the last few years with a capitalization of over six hundred billion dollars.

ERC-1462, Base Security Token extends the ERC-20 standard and is interesting because it meets the requirements of the Financial Institution (FI) from the point of view of legal regulations in financial markets. ERC-1462 ensures compliance with securities and legal enforcement. ERC 1426 also includes KYC (Know Your Customer) and AML (Anti Money Laundering) regulations, and the ability to lock tokens and restrict their transmission due to a legal dispute (Ali & Bagui, 2021, p. 54).

Token-based economies are enabled by a system that pays for its maintenance, thus technically and economically disrupting the existing centralized Internet infrastructure models. Blockchain makes organizations and communities economically sustainable, thus creating a user economy independent of massive financial systems and institutions that impose their own rules and manipulate financial markets only in their interest. Cryptoeconomics is based on the inseparable relationship between economic concepts and technology. Blockchain protocol design encodes a set of economic ideas, which may eventually have political repercussions.

5. Key terms in AML processes

A cryptocurrency is a form of virtual currency, a digital representation of value that has several different functions: (1) medium of exchange (2) unit of account (3) storehouse of value. What distinguishes virtual currency from "fiat currency" as the national currency and "e-money" which is the digital representation of fiat currency, is the lack of legal status of the national means of payment (Holman & Stettner, 2018, p. 26). Virtual currencies can be convertible (equivalent to fiat currency) or non-convertible (tokens in video games or online communities), while administration can be centralized

(admin-controlled) or decentralized because it manages code such as Bitcoin and Ethereum (2018, p. 26). According to this taxonomy, Bitcoin is a typical convertible, decentralized virtual currency that uses cryptographic principles in transactions in the absence of intermediaries that guarantee the validity of the transaction, such as banks. Bitcoin, which was launched in early 2009, is the oldest and most well-known cryptocurrency, and many variations with different characteristics and purposes have been created since then. According to the Statista portal, in March 2022, there were 10,397 cryptocurrencies worldwide (Statista, 2022). Cryptocurrencies are increasingly accepted as a means of raising capital, as a variant of "crowdfunding", and similar to the already existing legal mechanism IPO (Initial Public Offer). The use of cryptocurrencies to raise capital for investment purposes through ICOs is very often in conflict with applicable securities laws and other financial regulatory regimes.

6. Money laundering and cryptocurrencies business

Due to the anonymity and distributed data storage, transaction activities on blockchain are very hard to follow, which makes cryptocurrencies attractive to all actors who wish to exchange a value outside the legal financial system, primarily to money launderers.

You can obtain a cryptocurrency in three ways: the first one is through mining by having hardware equipment, the "rigs" specially constructed for this purpose. There are individual rigs or "farms" for mining of hundreds or even thousands of rigs. They are mostly legal in all countries because they themselves do not present a criminal activity. Another way is by purchasing through stock markets or VCE, by transferring fiat currency from a legitimate bank account, or by purchasing at a crypto ATM for cash, with previous authentication. The third way is by selling/purchasing of product or service on the legal or black market. Such products and services could be illegal.

Money laundering means that financial property is being hidden so it could be used without revealing illegal activities through which it was gained. "Broadly, there are three stages in money laundering, *placement*, in which illicit money enters the system, *layering*, in which its sources are obfuscated, and *integration* in which the illicit money is made to appear legal" (Kolachala, Simsek, Ababneh, & Vishwanathan, 2021, p. 2).

To create a new cryptocurrency, it is necessary to develop a code that establishes rules for its use, keeps the book of records and manages issuance and purchase of cryptocurrency. The administrator of the virtual currency is

a person or an entity that creates and issues virtual currency into circulation, such as the anonymous Satoshi Nakamoto is for Bitcoin, or Vitalik Buterin, a Canadian-Russian blockchain developer, is for Ethereum. After released into circulation, it runs on an open-source software that manages all of its functions. A change in code is possible only with the consensus of all participants in the chain. Therefore, the cryptocurrency itself is neutral, it is merely an instrument of a broader concept of the platform that emits it. Oftentimes original and creative business ideas with a team of young scientists and innovators can be found behind cryptocurrencies.

Besides the creator and the administrator of cryptocurrency, supporting applications have been developed to ease the access to and the use of the system.

- A crypto wallet is a software application or a USB stick that enables the owner to store and transfer cryptocurrency.
- Virtual Currency Exchange (VCE) is a platform for trading that, with a commission fee, enables exchanges of crypto-crypto and crypto-fiat with VCE or third parties via VCE.

7. Money laundering mechanisms by using cryptocurrency market

The cryptocurrency markets are potentially vulnerable to a wide spectre of criminal activities and financial crime. However, most of these criminal activities do not occur on the very blockchain and its infrastructure but in the surrounding ecosystem of cryptocurrencies' issuers, VCE and wallet, which support consumers' access to blockchain.

To buy and sell Bitcoin through VCE one needs a bank account to transfer fiat currency (USD) to an exchange office, in exchange for Bitcoins. Also, when Bitcoins are being sold at VCE, equivalent value in fiat currency is being transferred to a bank account. The identity of the account owner and all of their transactions are known to bank, which creates a clear picture about the scope of trade of person in question. In case the scope of trade is large and transactions are made often, the bank reports the account owner to government institutions for money laundering control. To avoid this scenario, owners of dirty money use services of Bitcoin traders.

Such modern tendencies in manners of money laundering can be a factor in an economic destabilization of national and international dimensions (Bjelajac, 2011), as well as an obstacle to affirmation of entrepreneurship and private sector's development (Bjelajac, 2012). The knowledge that illegally

obtained money could be "laundered" by using cryptocurrencies, primarily Bitcoin could significantly contribute to an expansion of gambling and crime in a community that would break its social cohesion (Bjelajac, 2017). Anonymity and complexity of transactions through VCE, use of Bitcoin mixers, cryptocurrencies traders and other mechanisms of hiding the trail of illegally obtained money is fertile ground for complicating the phenomenon of corruption as one of the biggest challenges of modern democratic society (Bjelajac, 2015). A number of private companies is specialized in the deanonymization of Bitcoin transactions and developing tools for analyzing illegal activities on the Bitcoin network. This has discouraged terrorist groups, so present forensic investigations have not shown a broad strategic intention of terrorist groups to access anonymous online financial transfers and use Bitcoin mixers, such as CoinJoin and DarkWallet.

7.1. Bitcoin trader

A Bitcoin trader is a person who buys or sells Bitcoins for cash with a big commission fee (up to 15% of transaction value), taking on the risk to be recognized by the investigative authorities because of frequent transactions that always end in large amounts being transferred from VCE to their bank account, even though there are no business activities that they visibly charge in Bitcoins to other persons. Bitcoin seller and Bitcoin buyer get into contact through a web forum or platform. These Bitcoins almost always come from illegal activities of all kinds, such as arms dealing, drugs, cybercrime, hacking services, child pornography, gambling, etc. In such cases Bitcoin trader represents the connecting link in the process of money laundering for criminals. Bitcoin seller and Bitcoin trader then meet in a public space with free Wi-Fi and where both parties feel secure because of the number of people present there. Bitcoin transaction is done very quickly, almost instantaneously, at that place over the internet. The seller transfers Bitcoins directly into the crypto wallet of the trader, after what the trader gives the seller the agreed equivalent value in fiat currency in cash. At this point, the transaction is finished. After selling Bitcoins on VCE and transferring fiat currency to their public bank account, traders immediately withdraw money in cash (Wisser, 2021). This way, the trader secures their need for cash so they could again buy Bitcoins of suspicious origin. Bitcoin trader that corresponds to the aforementioned profile will generally be considered criminal trader that aids criminals by facilitating the process of money laundering. As long as large amounts of cash in fiat currencies are the end result of such trade, actor will be accessible

to the investigative authorities. Only if Bitcoin were broadly recognized as a means of paying for other products through anonymous crypto wallets, its origin would remain unknown and there would be no need for Bitcoin traders.

7.2. Bitcoin mixer

Bitcoin mixer is an online "mixing service" of Bitcoin with the aim to hide the trail of its origin, with a compensation fee of up to 3,5% of the total Bitcoin amount. Thanks to the constitutive principle of transparency, all Bitcoin transactions on blockchain are public so it is possible to track their history and origin. By using a mixer, history of transactions becomes invisible and cannot be reconstructed. A mixer is designed so that Bitcoins received after "mixing" come from a reserve fund of the mixing service provider, such as Bitcoin Laundry, which completely and permanently hides the identity of the owner even from the most trained forensic investigators. "Bitcoin Laundry is here to help you keep your bitcoin transactions anonymous and private. When you mix bitcoin with us, we exchange the bitcoins you send us with coins from our reserve pool that can't be traced to your identity or your previous transactions. To be extra safe we also offer options to delay your payout and send it to multiple addresses. We keep our fees low and reserve pools large to make sure we can always give you the best possible Bitcoin mixer service" (Bitcoin Laundry, n.d.). Since there are legitimate reasons for using "mixers", their work is not against the law, and therefore their services are being abused by criminals for laundering "dirty" money.

7.3. Bitcoin conversion and its investment into NFT tokens

Another possibility for money laundering appeared with the emergence of the previously described NFT tokens on Ethereum's blockchain. NFT tokens are non-fungible tokens that represent a unique value of both digital and physical things, mostly artwork, ownership on Metaverse and many other digital values that can eventually be turned into fiat currencies by selling them on the market. The mechanism functions as follows: Bitcoins obtained through illegal actions of any kind or purpose are converted into Ether on the VCE, which is then deposited in the virtual wallet. A platform for trading in NFT tokens, such as OpenSea, is visited and an anonymous account is opened there. One of the NFTs is chosen in value from 1 to 70 million USD (e.g. NFT digital art photograph by an anonymous author Beeple, "Everydays: the First 5000 Days", was sold for 69,3 million dollars). Purchase is done from a virtual

wallet, as on every other legal platform, which then makes the transaction completed. With the final sale of NFTs, "laundered" Ethers return to the crypto wallet, are sold on the VCE for fiat currency, which is then withdrawn from a legal bank account in many smaller amounts or from different accounts. On the OpenSea platform, NFTs can be sold countless times and exchanged for other NFTs, which leads to the loss of trail of money invested after several cycles. Particularly the possibility to divide a large amount of Bitcoins in a virtual wallet into many small amounts of NFTs presents an exceptional opportunity for laundering "dirty" money.

7.4. Money laundering typologies

Consequently, there are four types of possible money laundering by using cryptocurrencies:

1. Possible money laundering could be indicated by frequent withdrawals of larger amounts of fiat currency in cash from bank accounts, without any obvious necessity, in combination with frequent non-cash receipts of large amounts in fiat currency to bank account, which originate from sale of virtual currencies on the VCE.
2. Buying virtual currencies – when a buyer anonymously offers their services over the internet websites to an unknown seller, then in a public space pays in cash the equivalent of Bitcoins with a high commission fee, without convincing legal or economic explanation for the reason for the transaction, in an amount that exceeds average private necessities of the seller (Wisser, 2020).
3. Buyer or seller use Bitcoin "mixer" services before or after selling Bitcoins.
4. Owner of illegally obtained Bitcoins invests into NFT and through many cycles of purchasing and selling NFTs hides the trail of "dirty" money.

8. State of global regulations on preventing money laundering – Regulatory approach of the USA

For the purposes of the US federal law, cryptocurrency may be considered differently, as a currency, security or a commodity (Allen & Overy, 2018). Framework for regulation of AML in the field of cryptocurrencies in the USA is most developed for centralized exchange offices, VCE. In 2013, FinCEN (Financial Crimes Enforcement Network) published guidelines, where it

is concluded that "virtual currency" is a form of "value that substitutes for currency" and that exchange offices or specific persons who administrate, exchange or use virtual currencies are therefore qualified as Money Service Businesses (MSB), regulated by the Bank Secrecy Act (Allen & Overy, 2018). It is important to emphasize that FinCEN made a distinction between those who only use virtual currency for buying commodities and services and those who exchange and administrate virtual currency, whereby they exempted from the law companies that purchase and sell cryptocurrencies for their own needs or for the needs of software programmers who also do not manage stock markets. This Act did not define the position of independent software developers as physical persons who create cryptocurrencies, which they then promote on their websites and sell directly to the consumers (e.g. like ICO).

9. Conclusion

Use of Bitcoin and other cryptocurrencies for laundering illegally obtained money is a fact, but no more significant than other types of money laundering. Much prejudice that exists about cryptocurrencies and crypto economy is a result of insufficient informing and knowledge about these truly complex and technically unclear categories for most people. One of the most frequent misconceptions about Bitcoin from its inception is that it would be an excellent currency for criminals and terrorists. Bitcoin's book of records on transactions is public, globally available and unchangeable. It will have records of every transaction as long as Bitcoin is functioning, so blockchain structure is not ideal for hiding one's identity in the long run. This means that for any crime that indeed has a victim it would not be recommendable for criminals to use Bitcoin. Its pseudonym nature signifies that addresses can be connected to true identities, even many years after a crime was committed (Ammous, 2018). Many criminals, but mostly online drug dealers and child pornography traders, have been identified and arrested because they got caught up in the hype about Bitcoin as a completely anonymous means of payment. Bitcoin can be useful in enabling "crime without victims", where the absence would not motivate investigative authorities to establish the identity of the "criminal". Therefore, it may be expected that crimes without victims, such as online gambling and avoiding control over one's capital, will use Bitcoin in hopes of never being identified, but the same cannot be claimed about murder and terrorism. Drug dealing over the internet by using Bitcoin most probably occurs more because of the addicts' desire than common sense, which is proved by a large number of drug buyers identified by competent

authorities (Ammous, 2018). In other words, Bitcoin will most probably increase the feeling of freedom for criminals, but it would not necessarily facilitate committing crimes. One type of high profile and high-profit crime, which used Bitcoin to a large degree, is ransomware, such as for example, CerberRansomware: a method of unauthorized access to computers that codes victims' files, "locks" them in folders and releases them only if the victim pays the required amount, usually in Bitcoins. Bitcoin is not something to be afraid of but something that should be accepted as a part of a peaceful and prosperous future, something that opens new perspectives to the entire mankind, which has far greater problems than money laundering that existed in the same proportions even before Bitcoin.

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BLOKČEJN TEHNOLOGIJE I PRANJE NOVCA

REZIME: U ovom radu želimo da razbijemo predrasude prema novim blokčejn tehnologijama i kriptovalutama, posebno Bitkoinu, kao instrumentima koji imaju pretežno negativne konotacije i predstavljaju priliku za razne kriminalne aktivnosti, uključujući i pranje novca stečenog na neetički i nezakonit način. U tom cilju, primenjene su metode genetičke, strukturne i funkcionalne analize, metoda korelativnih varijacija, kao i analogna i normativna metoda. Značajan deo rada je posvećen upoznavanju sa DLT – (*Distributed Ledger Technologies*), odnosno tehnologijama distribuirane knjige zapisa, na kojima počiva blokčejn i njegov najznačajniji eksponent – Bitkoin. Takođe smo morali da se dotaknemo i drugog najznačajnijeg doprinosa ovoj tehnologiji, a to je Ethereum blokčejn, koji proširuje perspektive koje je otvorio Bitkoin, a time i mogućnosti za zloupotrebe ove tehnologije, pre svega zbog njenog konstitutivnog principa anonimnosti. U radu smo pokazali da i pored neadekvatne zakonske regulative, kako na nacionalnim tako i na globalnom nivou, blokčejn i

kriptovalute nisu u značajnoj meri potpomogle puteve nezakonitog pranja novca, pogotovo ne u vezi sa teškim krivičnim delima, posebno trgovinom narkoticima, kao i sa terorizmom. Doprinos ovoga rada najviše vidimo u tipologizaciji mogućih postupaka pranja novca, pogotovo korišćenjem NFT (*Non Fungible Tokens*), nerazmenljivih tokena čiji hajp u poslednje dve godine može biti i rezultat uočene prilike za novi način pranja novca. Zaključujemo da se ne treba plašiti Bitkoina, već ga treba prihvatiti kao sastavni deo mirne i prosperitetne budućnosti, jer otvara nove perspektive čovečanstvu opterećenom većim problemima od pranje novca, koje je u istim razmerama postojalo i pre pojave Bitkoina.

Ključne reči: *Bitkoin, pranje novca, Distributed Ledger Technologies, algoritam, Ethereum.*

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ENDANGERING THE PUBLIC TRAFFIC – CRIMINAL LAW REGULATION AND PRACTICAL DOUBTS

ABSTRACT: Due to their frequency and importance, traffic crimes are an important subject of theoretical study. Violation of traffic regulations is sanctioned by the norms of misdemeanor and criminal law, which makes this area complex, but also leads to certain difficulties in the interpretation and application of law. The authors thorougly analyze the legal description of the criminal offense of endangering the public transport and its qualified forms. A particular attention is paid to the the interpretation of certain subjective and objective elements of this criminal offense (consequence, mens rea and objective conditions of incrimination). The authors point out certain inconsistencies in the court practice and propose legislative changes to improve criminal protection and establish a more legitimate and pragmatic distinction between criminal and misdemeanor acts.

Keywords*: endangering the public traffic, criminal offenses and misdemeanors, objective condition of incrimination.*

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1. Introduction

Crimes against public traffic safety justifiably attract a lot of attention. Public transport is an area that deserves criminal law protection, not only because of the great importance that traffic has in the modern world, but also because of the potentially serious consequences of violating traffic regulations for the safety, life, health and property of people. The number of criminal convictions for this crime is traditionally high in our country (Stojanović & Perić, 2011, p. 232).

Crime of Public traffic endangerment is proscribed by Article 289 of the Criminal Code of the Republic of Serbia (Penal Code of the Republic of Serbia; hereinafter: CC). Although criminal protection against endangering public traffic is indisputably necessary, the question arises as to whether the current legal solutions are optimal, ie whether the boundaries of the criminal zone have been correctly determined.

Law on Road Traffic Safety (Law on Road Traffic Safety, 2009; hereinafter: Traffic Law), defines basic concepts, sets traffic principles and rules, and is an indirect legal source for blanket norms of Criminal law. Also, this law prescribes a whole series of traffic violations, which sometimes leads to a dilemma – whether a certain action fulfills the characteristics of a traffic crime or a traffic misdemeanor. Therefore, a proper understanding of the crime under Article 289 is not possible without a proper interpretation of the relevant provisions of the Traffic Law.

2. Legal framework

The basic form of a criminal offense under Article 289 of the CC is present when a participant in road traffic fails to comply with traffic regulations and thus endangers public transport, which results in the endangerment of life or body of people or property of a large extent, and, consecutively, leads to minor bodily injury or property damage exceeding the amount of two hundred thousand Serbian dinars (Article 289 paragraph 1 of the CC). The most important features of the basic form of the crime are action, consequence and objective condition of incrimination.It is also worth paying attention to the notion of a participant in traffic, as a subject of a criminal offense, ie a perpetrator (Delić, 2021; Vuković, 2021).

A participant in the traffic can be any natural person, because this term is very broadly defined in Article 7, paragraph 67 of the Traffic law (“traffic participant is any person who participates in traffic in any way”). A traffic

participant may be in the role of driver of a motor or other vehicle, co-driver, passenger or pedestrian, or in the another conceivable role, as long as he/she is the part of the traffic on the road, or is in any way physically present in it (eg a person that is being worn by other person, or the one who is lying down, sitting or standing in the middle of the road). A participant in traffic is also a driver of an electric scooter or other means of transport whose use is not explicitly regulated by the relevant regulations.

The objective element of this crime is the place of execution. It can be committed only on the road, which means that the realization of the actus reus elsewhere would be another crime (as a rule, the crime of causing general danger or an aggravated act against the general security of people and property) (Đorđević & Kolarić, 2020, p. 185).

The actus reus of the criminal offense consists of non-compliance with traffic regulations, as a result of which a prohibited consequence occurs (Delić, 2021; Mrvić-Petrović, 2019). Although the action is linguistically formulated as inaction, it manifests itself in both forms: commission (eg drunk driving, violent driving, speeding) and omission offense (example – disobedience of the priority pass rule, failing to respect the right of pedestrian to pass the pedestrian line without obstruction). The action is of a blanket character because it refers to other regulations. This means that we assess the fulfillment of the action by applying the Traffic Law and bylaws, because they determine certain traffic rules.

It should be borne in mind that traffic participants are obliged to adhere to the principle of trust, but also to reasonably adapt to the circumstances, thus annulling the improper behavior of other participants in public transport. Therefore, "the defendant was obliged to adjust the speed to the extent that he could stop it before the place of collision with the cyclist as a foreseeable obstacle on the road, which the defendant did not do, but continued to move his vehicle with unadapted and illegal driving speed".[1] The driver is obliged to adjust his driving to the circumstances, regardless of the possible absence of warning or warning signs.[2]

Traffic participants are obliged to behave reasonably and properly, but if one notice the unusual behavior of another participant, he has to adapt to that fact (eg if he sees a pedestrian running across the street outside the pedestrian crossing, he must slow down or brake regardless the fact vehicle is moving at

[1] Presuda Okružnog suda u Subotici Kž. 209/09, od 21. aprila 2009. godine.
[2] Presuda Okružnog suda u Kraljevu Kž. 431/06 od 25. januara 2007. godine.

the prescribed speed and in the allowed way) (Lazarević, 2011; Delić, 2021; Stojanović, 2020).

Some authors argue that the principle of trust has a limited effect in relation to certain categories of traffic participants (eg children, alcoholics or the mentally ill persons, the elderly and disabled, etc.). Also, if the improper behavior of another participant in traffic was predictable, the driver is obliged to adapt to the situation. If a pedestrian showed an intention to cross the road outside the prescribed crossing, the driver would have to adjust his driving to avoid an accident (Stojanović & Perić, 2011, p. 234; Lazarević, 1995).

It is important to consider how, in the terms of Criminal law, the fact that the participant in the traffic was under the influence of alcohol or psychoactive substances at the time of the crime is treated. Two important issues arise.

First, if the perpetrator, due to the consumption of alcohol, drugs or similar means, has brought himself into a state in which he could not understand the significance of his act or manage his actions, or into a state in which his reasoning and decision-making abilities have been significantly reduced, the conditions for application of the institute of *actiones liberae in causa* are fulfilled (Kokolj, 1981; Milošević, 2009; Ćorović & Turanjanin, 2017; Vuković, 2021). The condition for the application of this institute is that the perpetrator in the time immediately before bringing into a state of insanity, ie significantly reduced sanity, had psychological relation (in the form of intention, recklessness or negligence) towards future criminal event (Article 24 CC; in relation to misdemeanors – Article 19 paragraph 4 of the Law on Misdemeanors 2013; see: Vuković, 2021a).

For example, the perpetrator drove himself with a car to a party with a friend. He consumes large amounts of alcohol there, as a result of which his ability to manage his actions has significantly decreased. Being in such a state, he refuses the suggestions of a friend to call a taxi, gets out angrily, drives his car with about 4 per mille of alcohol in his blood and causes a car accident in which another person is killed. In this hypothetical example, in the time immediately before being brought into a state of significantly reduced sanity, the perpetrator had a negligent attitude towards a traffic crime that would occur later (he could and was obliged to be aware that he would commit a crime out of unconscious negligence), and that constitutes a legitimate base for determining his guilt. Therefore, there is no legal ground for mitigation of sentence, in accordance with Article 24 para. 1 CC. However, the institute of actiones liberae in causa is very complex and challenging and also very rare in court practice (Milošević, 2009; Grujić 2020).

The situation in which the consumption of alcohol, certain drugs or narcotics leads to a reduction but not a complete exclusion (or significant reduction) of sanity is more common. Regarding the question of how to treat the mere decrease in sanity due to alcohol use, the Supreme Court of Serbia took an interesting position: "the court may treat a low level of alcoholism (0.71 gram per mille of alcohol) as a mitigating circumstance".[3] It is surprising that the court considers alcohol consumption a mitigating circumstance, because driving in a state of even mild alcoholism (if the analysis of an appropriate blood sample determines an alcohol content greater than 0.20 mg / ml) is an offense (Article 187 para. 3 of the Traffic Law). Also, the interpretation of Article 24 of the CC does not indicate that the will of the legislator was to hold the reduction of sanity that was caused by perpetrator blame as a mitigating circumstance.

However, the application of the institute of actiones liberae in causa requires that the perpetrator had a psychological attitude towards the future crime before he brought himself in state of reduced or excluded sanity, which can sometimes be disputable. In any case, there is no explicit legal provision that would prevent the consumption of alcohol that has led to reduced but not significantly reduced sanity as a mitigating circumstance. Therefore, the conclusion of the Supreme Court of Cassation is not *contra legem*, but it seems to us that it does not completely coincide with the will of the legislator, which can be indirectly inferred from the provision of Article 24 of the CC.

On the other hand, in previous court practice, there were decisions that took the perpetrator's alcoholism as evidence of *dolus eventualis*, which cannot be considered justified if there are no other circumstances to determine this form of guilt (Stojanović & Perić, 2011, p. 236; Mrvić-Petrović, 2019, p. 307). In the case law, there is also a decision that emphasized the use of alcohol cannot be seen as a mitigating circumstance even when the perpetrator, at the time of consuming alcohol, was not aware that he would later drive a motor vehicle (Simić & Trešnjev, 2008, pp. 191–192). Obviously, it is necessary to unify court practice by building clear and non-contradictory views on the use of alcohol by the perpetrator as a circumstance of a criminal event.

The consequence of a criminal offense is endangering the life or body of people or property of a larger value. Apart from the consequence, the legal description of this criminal offense also contains an objective condition of incrimination (Vuković, 2021, 82; Stojanović, 2018; Đorđević, Kolarić, 2020). The objective condition represents the part of the criminal event that

[3] Presuda Vrhovnog kasacionog suda, Kzz 136/10 od 26. maja 2010. godine.

is not compehended by the guilt, that is, the mental attitude of the perpetrator, unlike the objective features of the legal description of the criminal offense (Vuković, 2021, pp. 81– 82; Atanacković, 1980, p. 37).

The perpetrator should act with the appropriate form of mens rea (in this case *dolus*) in relation to the action and the consequence, while the objective condition of incrimination is not comprehended by his guilt (Vuković, 2021, p. 82).[4] The perpetrator intentionally does not respect a certain traffic rule and is aware that it causes danger (for example, cutting the road to another vehicle at an illegal speed), but he was not aware that it would cause minor bodily injury or property damage in the amount of 200,000 dinars. If he was aware of and wanted to cause someone's injury or significant property damage, that would represent another criminal offense.

It is disputable whether the current legal solution is good. Namely, it often happens that even during minor traffic accidents, one of the involved participants is slightly injured. It is not uncommon to suspect that one of them is falsifying an injury, therefore committing the crime of insurance fraud, which is, in many cases, extremely difficult to prove.

We believe that the misdemeanor law sanctions are quite sufficient in situations when the act results in light bodily injury, ie that the criminalization of the form from Article 289 para. 1 of the Criminal Code is not in accordance with the theoretical principle according to which criminal law is the *ultima ratio*. Such a solution unnecessarily burdens the criminal judicial apparatus with cases which, by their nature and degree of social danger, objectively fall into the domain of misdemeanor law. Having that in mind, we believe it would be better to link the objective condition of incrimination to the occurrence of grievous bodily harm, as done in Croatian legislation (Article 227 paragraph 1 of the Croatian Criminal Code – causing a traffic accident). Of course, in that case, the more serious form from Article 297, paragraph 1 should be abolished or significantly changed.

Also, it seems to us that violent driving, which is sanctioned as a misdemeanor in Serbia, although the legal description of the misdemeanor from Article 41 of the Traffic Law points to significant danger to other road users; should be prescribed as a criminal offense (similar as in the Article 226 of the Croatian Criminal Code – reckless violent driving in road traffic). After all, it seems clear that certain forms of violent driving, even in the abstract sense, are more socially dangerous behaviors in relation to the basic form of this crime.

[4] Rešenje Okružnog suda u Beogradu Kž. 2897/06, od 17. novembra 2006. godine.

The form of guilt (mens rea) in the basic form of this offense is *dolus eventualis* (Mrvić-Petrović, 2019, p. 308; Đorđević & Kolarić, 2020, p. 186). In court practice, it has proved to be especially difficult to distinguish between dolus eventualis and conscious negligence. To distinguish between two forms of guilt, court vastly used the notion of ruthlessness, ie where the degree of ruthlessness was high, it was assumed that dolus eventualis was present. The significant degree of ruthlessness is reflected in the behavior of the perpetrator who "does not take into account the goods and interests of other participants in traffic", and therefore deserves a social reproach (Stojanović & Perić, 2011, p. 235).

It is not uncommon that two or more traffic participants significantly contribute to the occurrence of a traffic accident. In that case, it is important to determine whose action was the predominant cause of the traffic accident. Thus, the Court of Appeals concluded that the traffic accident was caused by the accused driver of a car who was making a semicircular turn when he was hit by a motorcycle driving at an unreasonable speed, because the defendant was obliged to miss a motorcycle at an unsafe distance. His action was decisive for the accident, although the motorcyclist also violated traffic regulations and contributed to the accident.[5] However, there are situations when two or more traffic participants conduct actus reus, and everyone is liable (Mrvić-Petrović, 2019, p. 308).

The relationship between misdemeanor and criminal liability, especially in light of the *ne bis in idem* principle (Banović, 2020; Škulić, 2017; Zupančič, 2011), is often a practical problem, as in other areas (eg public peace and order, personal data protection, .production, trade, possession and carrying of weapons and explosives; violence at sports events, etc.). Issues arise due to the fact that the legal descriptions of certain misdemeanor partially (sometimes even dominantely), overlap with the legal definition of criminal offense.

Recent case law of the European Court of Human Rights, in particular the cases of *Zolotukhin v. Russia* (application 14939/03, judgment of 10 February 2009), *Maresti v. Croatia* (application 55759/07, judgment of 25 June 2009) and *Muslija v. Bosnia and Herzegovina* (Application 32042/11, Judgment of 14 January 2014) (Mrvić-Petrović, 2014, p. 32), seriously shook the previous practice. In mentioned verdicts the European court of Human Rights took the stand that if the Misdemeanor court included in his decision the factual substratum of the criminal event that fall within the domain of the criminal law, the accused must not therefore suffer negative legal consequences, ie

[5] Presuda Apelacionog suda u Beogradu Kž3 3/17, od 7. aprila 2017. godine.

the procedural prohibition ne bis in idem must be applied. Judgments of the European Court of Human Rights are a clear signal to legislators that it is necessary to make more precise distinctions between misdemeanors and crimes (Ivičević-Karas & Kos, 2012, p. 581).

This also refers to a clearer distinction between traffic crimes and misdemeanors. Criminal offense under Article 289 Art. 1 of the Criminal Code differs only quantitatively from a traffic misdemeanor, which creates practical problems and leaves too much room for discretionary assessment of the police – whether to file a request to initiate misdemeanor proceedings or criminal charges (Mrvić-Petrović, 2014, p. 33).

The difference between the Serious crime against public traffic safety (Article 297 of the CC) and traffic misdemeanor is far more obvious. The position of the Supreme Court of Cassation is correct: .... "the act contains only elements of the misdemeanor from Article 332, paragraph 1, item 77 of the Traffic Law (acting contrary to the provisions of Article 187, paragraph 2 of the Traffic Law), and does not contain elements of the criminal offense ... due to which .... the misdemeanor procedure did not exhaust the causal link between the defendant's actions contrary to the provisions of Article 187, paragraph 2 of the Traffic Law – the defendant's alcoholism and the consequences – traffic accidents".[6]

The Constitutional Court reasons, similarly, emphasizing in its decision that a single life event can include two different acts – criminal and misdemeanor. When misdemeanor judgement does not comprehend the whole life event, but only partially resolves it, the ne bis in idem rule is not violated if criminal proceedings are also conducted. However, the Constitutional Court warns that this procedural prohibition may be activated in the case of acts in which the legal description of the misdemeanor and the criminal offense is mostly the same, ie very similar, as well as when certain judgement of Misdemeanor court includes facts which are part of criminal offense legal description[7] (Mrvić-Petrović, 2014, p. 34). Misdemeanor courts should take care not to include the factual substratum of the criminal part of the event (Ivičević-Karas, Kos, 2012, p. 582).

Aggravated form of this criminal offense will exist if the perpetrator "endangers railway, ship, tram, trolleybus, bus or cableway traffic by endangering the life or body of people or large-scale property" (Article 289, paragraph 2). Here, the legislator does not require the fulfillment of the

[6] Presuda Vrhovnog kasacionog suda Kzz 1189/2018, od 30. 10. 2018. godine.

[7] Presuda Ustavnog suda Srbije Už 1285/2012 od 26. marta 2014. godine.

objective condition of incrimination. Obviously, he considered actus reus of the offense to be socially dangerous enough, so other consequences are not necessary. This solution is also reasonable because of the nature of this transport means (large number of passengers can be in it at the same time, and the potential consequences are more severe) (Stojanović, 2018; Delić, 2021; Čejović, 2008). The prescribed sentence is from six months up to five years of imprisonment

The privileged form of the offense differs from the basic form solely by the subjective element, while the objective elements are identical. The privileged form, therefore, exists when the act referred to in paragraph 1 is committed out of negligence.

Apart from the aggravated form from Article 289, paragraph 2, the legislator also prescribes another form of this crime, but as an separate offense, under Article 297 CC. This article prescribes qualified forms of several criminal offenses against public traffic safety. A sentence of one to eight years of imprisonment is prescribed if, as a result of the act referred to in Article 289, paragraph 1 or 2, a serious bodily injury of a person or large-scale property damage occurs. This is a offense qualified by a more severe consequence, which means that in relation to a serious injury or large-scale damage, there should be negligence on the part of the perpetrator.[8]

Therefore, the determination of guilt is not the same as in the Article 289, because in that case guilt is not determined in relation to the objective condition of incrimination. Here, however, it is necessary for the court to determine how the perpetrator acted with intent in relation to the basic form (ie intentionally caused danger) and due to his negligence there was a serious bodily injury or property damage of great proportions.

The most severe form of the offense is present when due to the act from Article 289 para. 1 and 2 the death of one or more persons occured. Sentence of two to twelve years of imprisonment is envisaged.

Article 297 prescribes more severe forms of offense from Article 289, paragraph 3. If there was a serious bodily injury or large-scale property damage due to negligent endangerment of public traffic, a prison sentence of up to four years is envisaged. Here, it is necessary for the perpetrator to act out of negligence, both in relation to the basic action (causing danger) and in relation to the severe consequence. More severe form, for which a sentence of one to eight years in prison is prescribed, exists if the consequence of the negligient actus reus is reflected in the death of one or more persons.

[8] Rešenje Okružnog suda u Beogradu Kž. 2897/06, od 17. novembra 2006. godine.

For all forms, the mandatory imposition of a safety measure – prohibition of the driving of a motor vehicle is prescribed by Article 297, paragraph 5.

3. Conclusion

The criminal offense of endangering public traffic is frequently committed and domestic court practice has been relatively well developed. However, certain legal solutions are controversial, especially with regard to the distinction between misdemeanors and criminal offenses. We believe that the legal description of this crime should be changed by recomposing the basic form of the offense. In our opinion, the occurrence of a light bodily injury, which is an objective condition for incrimination of the basic form is not a sufficient reason to criminalize behavior that dominantely has the characteristics of a misdemeanor.

Practical problems, such as the possible insurance frauds, and also the fact that unnecessary burden is posed on the criminal judiciary, are not negligible. Practice shows that in these cases the institute of postponement of criminal prosecution is often resorted to (Article 283 of the Criminal Procedure Code, 2011; hereinafter: CPC; see: Banović, 2020), which leads to ilegitimate solutions. For example, if the public prosecutor orders the perpetrator who confesses the commitment of a criminal offense to "pay a certain amount of money used for humanitarian or other public purposes to the account prescribed for the payment of public revenues" (Article 283, paragraph 1, item 2 of the CPC), and then "the suspect fulfills the obligation from paragraph 1 of this Article within the deadline, the public prosecutor will reject the criminal report and inform the injured party, and the provision of Article 51, paragraph 2 of the Code will not apply" (Article 283, paragraph 3 of the CPC).

Pursuant to the procedural prohibition *ne bis in idem*, in this case, misdemeanor proceedings cannot be conducted in connection with the same criminal event, which is indisputable in the case law of domestic misdemeanor courts (Mrvić-Petrović, 2014, p. 35). Consequently, the suspect will not be imposed a security measure of prohibiting driving a motor vehicle, nor will his crime be entered in the criminal record (misdemeanor or criminal), and he will not earn penalty points, so it can be concluded that postponing prosecution is more favorable than imposing a misdemeanor sanctions.

Therefore, the para-criminal sanction imposed by the public prosecutor by applying his "quasi-judicial powers" (Mrvić-Petrović, 2014, p. 35) is more favorable than the misdemeanor one. In this way, the practice has shown that

the illogicality of the legal solution is indirectly corrected, but with criminally politically unacceptable results. Legislative intervention would also make sense in terms of (reckless) violent driving, because the degree of social danger of its individual forms exceeds the abstract danger of the current basic form of crime under Article 289.

In addition to this, we believe that it is necessary to harmonize court practice regarding the issue of treating the perpetrator's alcoholism.

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UGROŽAVANJE JAVNOG SAOBRAĆAJA – KRIVIČNOPRAVNA REGULATIVA I PRAKTIČNE NEDOUMICE

REZIME: Saobraćajna krivična dela su, zbog svoje učestalosti i značaja, važan predmet teorijskog izučavanja. Kršenje saobraćajnih propisa se sankcioniše normama prekršajnog, privrednoprestupnog i krivičnog prava, što ovu oblast čini složenom, ali i dovodi do izvesnih teškoća u tumačenju i primeni prava. Autori podrobno analiziraju zakonski opis krivičnog dela ugrožavanja javnog saobraćaja i njegovih kvalifikovanih oblika inkriminsanih u zasebnom članu. Posebna pažnja je posvećena razmatranju značenja pojedinih elemenata bića krivičnog dela (posledice i objektivnog uslova inkriminacije). Autori ukazuju na izvesne neujednačenosti u sudskoj praksi i predlažu izmene pozitivnopravnih rešenja u cilju unapređenja krivičnopravne zaštite i uspostavljanja legitimnijeg i pragmatičnijeg razgraničenja između krivičnih i prekršajnih dela.

***Ključne reči**: ugrožavanje javnog saobraćaja, krivična dela i prekršaji, objektivni uslov inkriminacije.*

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HUMAN RIGHTS' APPROACH TO ENVIRONMENTAL PROTECTION – PRACTICE OF THE HUMAN RIGHTS COMMITTEE

ABSTRACT: The consequences of environmental degradation and pollution have raised the issue of the significance of the link between human rights and environmental protection. Since the International Covenant on Civil and Political Rights does not explicitly recognize the right to a healthy environment, the Human Rights Committee has accepted the possibility that a State Party can violate a number of civil and political rights by its acts or failures in the field of environmental protection. The main purpose of the paper is to analyze the practice of the Committee in order to define the standards in the context of violation of human rights by environmental degradation. The paper will address regular reports submitted by State Parties, as well as general comments and concluding observations of the Committee. A special attention will be paid to the views of the Committee regarding the individual complaints received under the First Optional Protocol to the ICCPR. On the basis of the analytical discussion, the authors will provide a conceptual clarity to the interpretation of standards that might be useful in articulating the civil and political rights related to environmental protection.

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***Key words**: The International Covenant on Civil and Political Rights, the Human Rights Committee, human rights in relation to environment*

1. Introduction

Human security must be viewed through the prism of human rights and contemporary threats, of which environmental endangerment is dominant (Bjelajac, 2017). People face challenges and new environmental problems every day. Modern man needs to understand that his environment is constantly changing. As the environment changes more and more, he needs to become aware of the problems that surround him as well (Bjelajac, 2018). The consequences of environmental degradation and pollution have raised the issue of the significance of environmental protection to human well-being (Marković & Ditrih, 2018, p. 16). The recognition of the international community that environmental harm can interfere with the full enjoyment of human rights confirmed by the provisions of the Stockholm Declaration caused a debate among scholars regarding the proclamation of new substantive right to a healthy environment or involvement of environmental dimensions to already recognized human rights (Arsić, Matijašević & Berber, 2011, p. 25). There is no unanimously accepted definition for the right to a healthy environment. Theoretical meaning given by scholars is that it is the right to an ecologically balanced, sustainable, healthy, clean, or satisfactory environment that permits healthy living for human (and sometimes non-human) entities on Earth (Kotzé, 2018, p. 136). It is worthwhile to mention that the proliferation of the right is dependent on solutions produced both on the international level and national, through constitutional embedding. The latter, represents an effective way to achieve constitutional objective, while, at the same time, offering protection to fundamental rights and aligning constitutional cultures (Guceac & Serotila, 2014, p. 67). Despite the fact that more than 80 countries have adopted a constitutional "right to a healthy environment", this right is still not protected by international human rights treaties (Boyd, 2012, p. 47; Mladenov, 2017, p. 77).

The International Covenant on Civil and Political Rights (hereinafter: the ICCPR) does not explicitly recognize the human right to a healthy environment. Therefore, the attention of the Human Rights Committee (hereinafter: Committee) has been at the examining the linkage between human rights and the environment within the framework of already proclaimed civil and political rights human rights (Shelton, 2006, p. 144).

The main purpose of the paper is to analyze the practice of the Committee in order to define the standards in the context of violation of human rights

by environmental degradation. First of all, the subject of the research will refer to the statements of the Committee regarding the specific human rights that could be affected by environmental impacts. The paper will address regular reports submitted by State parties, as well as General Comments and Concluding Observations of the Committee. On the basis of the analytical discussion, the authors will provide conceptual clarity to interpretation of standards that might be useful in articulating the civil and political rights related to environmental protection as well as their own contribution to the development of environmental aspect of human rights.

2. Practice of the Human Rights Committee

The Committee has acknowledged that environmental harm may threatened the following rights protected by the ICCPR: rights of minorities, the right of peoples to self-determination, right to life and right to privacy.

2.1 Rights of minorities

The influence of environmental factors on the rights of minorities to enjoy their culture, especially indigenous people in accordance with Article 27 of the ICCPR has been frequently recognized by the Committee (ICCPR, 1966, Article 27). According to the General Comment No. 23, on the rights of minorities, Article 27 includes rights which may be closely associated with the land, natural resources and the environment thereof, especially in the context of the rights of indigenous minority population. Furthermore, General Comments No. 23 adds that "that right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law" (General Comment No. 23, 1994, par. 7). Therefore, environmental harm or some measures taken in the field of the environment, that affect or interfere with those rights could represent the violation of Article 27.

The fact that the rights of the minorities could be threatened by environmental degradation is also recognized within the "jurisprudence" of the Committee. The Committee addressed numerous communications regarding the violation of the indigenous peoples' rights to enjoy their culture caused by environmental harm (Ward, 2011, p. 56). Many of the cases brought by the members of the indigenous communities in accordance with Article 27 of the ICCPR challenge natural resource exploitation by the state or companies. The Committee concluded that economic development of the state based on the exploitation of the natural resources should be

in compliance with the obligations under Article 27 (MacKay, 2001, pp. 12–13).

In the case Ángela Poma Poma v. Peru the Committee confirmed this approach.[1] The author of the communication claimed that Peru has violated Article 27 of the ICCPR by diversion the course of the river, which considerably reduced the water supply that caused the gradual drying out of the wetlands where author's indigenous community used to practice llama-raising as a part of their traditional customs. The author of the communication also emphasized that the appropriation of water destroyed the traditional way of life of the members of the indigenous community and interfere with their intention to continue to live on their traditional lands (McKay, 2009, pp. 92–93). Within its concluding remarks, the Committee stated that activities carried out by Peru represent significant interference with the author's rights and rights of her community to enjoy their culture under Article 27 of the ICCPR and that Peru has violated the obligation imposed by the ICCPR.

One of the first cases that provided indicators of the seriousness of environmental harm suffered by the indigenous community in the context of violation of Article 27 is *Lubicon Lake Band v. Canada*.[2] The author of the communication alleged violations by Canada of the Lubicon Lake Band's right of self-determination, as well as the right to dispose freely of their natural wealth and resources. The communication asserted that even though the Indian Act (1970) and Treaty 8 concerning aboriginal land rights in northern Alberta (1899) confirmed the traditional way of living of the original inhabitants of that area, their traditional land has been expropriated for commercial purposes. The Committee did not find the violation of most of the rights stated in communication, however, it recognized the breaches of the provisions of Article 27 of the ICCPR by saying that:

"Historical inequities, to which the State party refers, and certain more recent developments threaten the way of life and culture of the Lubicon Lake Band, and constitute a violation of article 27 so long as they continue".[3]

Moreover, implementation of Article 27 in the context of the rights of indigenous people affected by environmental impacts was the subject of consideration of the Committee in its Concluding Observations. Regarding the observations on Argentina, Australia, Columbia, Ecuador, Georgia,

[1] Poma Poma Ángela v. Peru, U.N. Doc. CCPR/C/95/D/1457/2006 (2009).

[2] Lubicon Lake Band v. Canada, Communication No. 167/1984, U.N. Doc. Supp. No. 40 (A/45/40) at 1 (1990).

[3] Ibidem., par. 33.

Guyana, Mexico, Nicaragua, Sweden and Venezuela, with respect to Article 27 of the ICCPR, the Committee expressed interest to receive additional information concerning the measures taken by states to ensure the enjoyment of the environmental dimension of collective rights adjudged to indigenous communities (Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, High Commissioner for Human Rights, 2013, p.15).

3. Right of self-determination

The Committee's statements on human rights which could be violated by acts or failures of the states in the field of environmental protection also referred to the right of self-determination protected by Article 1 Paragraph 2 of the ICCPR (ICCPR, 1966, Article 1 Paragraph 2). In General Comments No.12 on the right of self-determination, the Committee emphasized the importance of the environmental dimension of the economic aspect of this right as stipulated in Article 1 Paragraph 2. In addition, it is stated that according to Article 1 Paragraph 2 states should identify factors that "prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph" (General Comment No. 12, 1984, par. 5).

In its annual report regarding the initial report of France, the Committee concluded that right of self-determination could be threatened by the pollution and the exploitation of natural resources. The Report of the Committee identified the dilemma, how France reconciled the right of the people to freely dispose of their natural resources and "to protect themselves from atmospheric pollution with the carrying out of atomic weapon tests in the Murunoa Atoll" (Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, High Commissioner for Human Rights, 2013, p. 20).

The practice of the Committee regarding the right of self-determination does not include the "jurisprudence", since it is not possible to bring the claim of violation of Article 1 of the ICCPR under the First Optional Protocol to the Covenant (Jong, 2015, p. 83).[4] In addition, this finding was confirmed in the Lubicon Lake Band case.

[4] The Optional Protocol provides a procedure regarding the communications from individuals claiming to be victims of violations of the rights protected by articles 6 to 27 of the Covenant.

4. Right to life

According to the practice of the Committee the right that has been frequently addressed in the context of environmental degradation is the right to life protected by Article 6 of the ICCPR. In the light of the fact that the interpretation of the right to life includes entitlement of individuals to be free from acts of the State intended or expected to cause a deprivation of life, there is no doubt that this right can be directly impacted upon by environmental harms intentionally caused by State (Atapattu, 2002, p. 99). However, there is considerable uncertainty regarding the issue whether the right to life covers all environmental harms. "Jurisprudence" of the Committee points toward the four applicable criteria related to the assessment of complaints in the context of environmental harm as a violation of the right to life. These criteria include the following standards: the author of the communication must be under a real and imminent threat; the author of the communication must be personally affected by the alleged violation regarding the environmental harm; the author of the communication must submit the evidence indicating that environmental contamination has reached or will reach the human environment; the breach of Article 6 could not be based on a hypothetical risk (Li, 2013, p. 25).

In the periodic reports submitted to the Committee during the 1990s, States parties for the first time refer to environmental issues within the implementation of Article 6 of the ICCPR. In its fourth periodic report, Belarus emphasized the contribution of the Environmental Protection Act to the protection of the right to life.[5] The third Peru's periodic report to the Committee interpreted Article 6 to include measures regarding the reduction of environmental pollution in accordance with the provisions of the Peru Constitution which guarantees the right to enjoy a balanced environment.[6]

Furthermore, in its General Comment No. 36 on the right to life the Committee has continued to identify environmental degradation, climate change and unsustainable development as one of the most pressing and serious threats to the right to life under Article 6 of the ICCPR (General Comment No. 36, 2018, par. 62). The Committee has invoked Article 6 in connection with measures that State parties should take to ensure sustainable management of natural resources, to establish and implement environmental standards and provide procedures regarding the right to an access to environmental information.

[5] Belarus' Periodic Report, UN Doc. CCPR/C/84/Add. 4 (1996).
[6] Peru's Periodic Report, UN doc. CCPR/C/83/Add. 1 (1995).

In *Bordes and Temeharo v. France* the Committee considered a claim related to underground nuclear test in the South Pacific as a potential threat of violation of the right to life of French citizens in French Polynesia.[7] The authors of the communication argued that the decision of the French government to conduct a series of underground nuclear tests caused environmental damage and violated their right to life under Article 6 of the ICCPR. The authors recalled the General Comments of the Committee on the right to life on account of the indirect effect of the radiation on human life through the environmental harm and contamination of the food chain (Selected Decisions of the Human Rights Committee under the Optional Protocol, 2005, p. 5). Furthermore, the authors claimed that French authorities did not take the positive measures due to Article 6 based on the fact that France was not able to prove that nuclear tests are not threat to the health of the citizens in French Polynesia. The State party argued that the authors could not be qualified as "victims" as required by Article 1 of the First Optional Protocol since they were not able to show that the nuclear tests caused the violation of their right to life, nor that there was a real treat of the violation. Despite the fact, that the Committee recognized the link between the environmental harm and the right to life, it had accepted the argument of the State regarding the status of the "victim" and therefore concluded that communication was inadmissible.

In *Susila Malani Dahanayake,* the Committee addressed a communication against Sri Lanka related to the road development project proposed by the State authority.[8] The authors of the communication claimed that the environmental effects of the proposed routes of the road threatened their right to life due to Article 6 of the ICCPR, which, according to the interpretation of the Committee includes the right to live in a healthy environment. The State party responded that the intention of the project was not to violate the authors' right to live in healthy environment indicated that this right could be observed as the part of the right to life (Turner et al. 2019, p. 26). In the Committee's view, the authors had not sufficiently substantiated the claim that they had the status of "victims" on the basis of violation of the right to life in accordance with Article 6.

In the light of the facts of this case, as the previous one, it is hard to determine the standards related to the status of the "victim". On the basis of the above consideration concerning the applicable criteria related to the

[7] Bordes and Temeharo v. France, Communication No. 645/1995, U.N. Doc. CCPR/C/57/D/645/1995 (1996).

[8] Dahanayake et al. v. Sri Lanka, Communication No. 1331/2004, U.N. Doc. CCPR/C/87/D/1331/2004 (2006).

assessment of complaints in the context of environmental harm as a violation of the right to life, it is unclear what were the evaluation standards of the Committee in these cases. Thus, imprecise requirements regarding the status of "victim" may pose serious doubts about invoking Article 6 in connection with the environmental degradation.

5. Right to respect for private and family life

According to the practice of the Committee, the right to respect for private and family life due to Article 17 of the ICCPR can also be directly impacted by environmental degradation. General Comments No 16 of the Committee did not refer to the linkage between right to privacy and environmental protection (General Comments No.16, 1988). However, the Committee has dealt with the environmental issues in several cases related to the right to a home free from arbitrary or unlawful interference under Article 17 of the ICCPR.

In the context of environmental degradation with regard to the right to privacy due to Article 17, the Committee has addressed communication in *Borde and Temeharo v. France*.[9] The right to respect for private and family life was one of two rights that the authors contended were being violated by nuclear testing in French Polynesia. Despite the fact that the Committee recognized that environmental harm could constitute an unlawful interference with the right to family life, as previously stated in the paper, the Committee decided that the communication was inadmissible.

In the decision published with regard to the case Portillo Cáceres v. Paraguay, the Committee emphasized that environmental factors could pose the threat to the right to respect for private and family life and the home.[10] The author of the communication claimed that Paraguay failed to provide protection for individuals from environmental harm caused by agribusinesses which used illegal chemicals. On the basis of the failure of the State party to exercise an effective control over the agribusiness companies, the author argued that the State breached obligations due to Article 17. The Committee concluded that Paraguay has violated Article 17 of the ICCPR, noting that environmental degradation can pose a threat to the right to private and family life and home when the effects of pollution reach a certain level of severity.

[9] Bordes and Temeharo v. France, Communication No. 645/1995, U.N. Doc. CCPR/C/57/D/645/1995 (1996).

[10] Cáceres Portillo v. Paraguay, Communication No. 2751/2016, UN Doc. CCPR/C/126/D/2751/2016 (2019).

The decision in the Portillo Cáceres v. Paraguay is the first one in which the Committee clearly stated that according to Article 17 states are obliged to respect to the right to private and family life and home in the light of the protection against environmental harm. There is no doubt that this decision will be precedent cited in many subsequent cases.

6. Conclusion

Enjoyment of human rights can be seen as a milestone in the development of universal standards concerning the environmental protection. During the last three decades, in the absence of petition procedures according to environmental treaties, victims of environmental harm seek redress for human rights violations through relevant international forums. As this article indicates, the link between human rights and environment can be expanded to cover comprehensive approach by which environmental degradation may be challenged in the United Nations system as a violation of civil and political rights. In the decisions on the communications referred to environmental issues, the Committee concluded that a number of rights may be implicated by environmental degradation or exploitation.

According to the analysis of the Committee's jurisprudence, the right of minorities to enjoy their culture has been central to the most detailed discussion of duties under Article 27 of the ICCPR regarding environmental degradation and exploitation of natural resources. In this context, the Committee emphasized the importance of the obligations of the State parties to take measures to protect the rights of indigenous peoples in particular with regard to the fact that economic development of the state based on the exploitation of the natural resources should be in compliance with Article 27 and should involve the consultation with members of the indigenous community whose rights could be threatened. Despite the fact that claims regarding the right to life have been raised over the years in the Committee's jurisprudence, the Committee has not concluded in response to a communication that environmental harm has caused a violation of Article 6. With regard to the right to privacy in *Portillo Cáceres v. Paraguay* the Committee clearly stated that according to Article 17 states are obliged to respect the right to private and family life and home in the context of environmental degradation. Since this is the recent decision, it is expected to bring the new standards in the field of environmental protection regarding the interpretation of Article 17.

As the analytical discussion indicates, progressive enforcement of international environmental law may well depend upon human rights claim.

However, regarding the developing standards of the Committee in this context, there is still a lot to be done. The practice of the Committee should establish more precise standards for recognition of environmental degradation throughout the globe as human rights problems, but for remedial measures as well. An adequate groundwork for the more meaningful protection of the human rights and the environment would refer to the recognition of a distinct right to a healthy environment either by amending the ICCPR or by adding a protocol to the ICCPR.

Without proper action, as in the case of the right to healthy environment, victims of infringement of said right may face inefficient or lackluster instruments in order to protect themselves as well as face a disparity among the legal instruments at hand in comparison to the evolving challenges and complexity that progress ensues. The expansion of these phenomena in legal theory and practice underpins the significance in balancing human rights, identifying associated risks and benefits (Serotila, 2021).

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ZAŠTITA ŽIVOTNE SREDINE IZ UGLA LJUDSKIH PRAVA – PRAKSA KOMITETA ZA LJUDSKA PRAVA

REZIME: Posledice degradacije životne sredine i zagađenja postavile su pitanje važnosti veze između ljudskih prava i zaštite životne sredine. Budući da Međunarodni pakt o građanskim i političkim pravima izričito ne priznaje pravo na zdravu životnu sredinu, Komitet za ljudska prava je prihvatio da države ugovornice mogu svojim aktima u oblasti zaštite životne sredine povrediti brojna građanska i politička prava. Osnovni cilj rada odnosi se na analizu prakse Komiteta radi definisanja standarda u kontekstu povrede ljudskih prava usled degradacije životne sredine. U radu će se razmatrati periodični izveštaji koje su podnele države ugovornice,

kao i opšti komentari i zaključna zapažanja Komiteta. Posebna pažnja biće posvećena stavovima Komiteta iznetim u postupanju po pojedinačnim predstavkama podnetim u skladu sa Prvim fakultativnim protokolom uz Pakt. Na osnovu analitičke diskusije autori će pružiti konceptualnu jasnoću tumačenja standarda koji bi mogli biti korisni u pogledu sagledavanja građanskih i političkih prava iz ugla zaštite životne sredine.

***Ključne reči**: Međunarodni pakt o građanskim i političkim pravima, Komitet za ljudska prava, ljudska prava u vezi sa životnom sredinom.*

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LEGAL RELATIONS BETWEEN LEGAL ENTITIES IN REGARD TO THE LETTER OF CREDIT WITH A REFERENCE TO THE ROLE AND SIGNIFICANCE OF BANKS IN THE STRUCTURE OF THE FINANCIAL SECTOR IN SERBIA

ABSTRACT: Banks are the most visible financial intermediaries in the field of economy. Their importance derives from the place and role in both economic and financial systems of each national economy. In the financial sector of Serbia, banks are the most important financial institutions, accounting for about 90% of total financial sector assets. The topic of the research refers to the letter of credit as a service banking business and it is extremely current topic, scientifically and socially justified, being important for domestic and foreign trade payments. The letter of credit is a complex banking business. Its complexity is reflected, among other things, in the number and types of legal relationships formed between the participants. Having in mind all previously mentioned facts, the paper analyzes the issues of the concept and classification of banking business as well as the legal aspect and legal relations formed

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in the letter of credit. The research part of the paper deals with the role and importance of banks in the financial sector of Serbia.

Keywords: *the letter of credit, legal relations in the letter of credit, banking, financial sector, Republic of Serbia*

1. Introduction

The impact of economic policy, flows and market mechanisms at the global and regional level is primary of interest for national economies and economic flows. On the other hand, it is also important for individual businesses, whose interests are basically the fulfillment of obligations undertaken on the basis of contracts in the businesses with in which they operate.

This is a very important issue, so due to its importance in recent decades, there has been an inevitable and much-needed improvement in ensuring the fulfillment of obligations undertaken on the basis of concluded contracts, as well as mediation in the implementation of specific business activities (values, doing business abroad, complexity in the realization of a specific job, as well as other jobs that carry with them certain risky or complicated constitutive elements or parameters), exceed the standards in business that are part of the daily activities of business entities.

According to Milosavljević (2017), "in the business of economic entities, the tendencies of modernization and harmonization of rules on international business are increasingly pronounced" (p. 50).

Letter of credit is very important in business law. In the theory and practice of banking, it is emphasized that a documentary letter of credit is practically an irreplaceable service banking business, especially in international payment operations. According to its principle classification, it belongs to the group of neutral banking operations, precisely because of the specific status of the bank during the opening and realization of letters of credit. Namely, in the business of letters of credit, the bank does not have the status of a debtor or a creditor, but performs certain actions on behalf of its client.

The letter of credit is regulated in both domestic and international law. In domestic law, the letter of credit is regulated by the provisions of the Law on Obligations (1978) and the provisions of the General Customs of Trade (1954). In international law, the letter of credit is governed by the Uniform Rules and Customs for Documentary Letters of Credit – UCP 600 (1933) of the International Chamber of Commerce based in Paris, the latest version of which was adopted in 2007 by the Commission on Banking Technology and Practice.

Having in mind the topic of the paper, in the following text we will talk more about the conceptual definition and classification of banking operations, the concept and characteristics of the legal transaction in regard of letters of credit, and legal relations in that are indicated in this business. The empiric research part of the paper will deal with the role and importance of banks in the structure of the financial sector in Serbia

2. The concept and classifications of banking transactions

According to Carić (2007), banking transactions are "legal transactions concluded between banking organizations in connection with the legal circulation of money and the provision of economic services with money" (p. 15). According to Mastilović (2019), "all banking operations have certain specifics, and that is that they are composed according to pre-prepared and compiled standard, and standard contracts or according to the general rules of business of the banking organization, which means concluding transactions by adhesion. One of the contracting parties is always a banking organization and contracts are valid only if they are drawn up in writing" (p. 773).

In legal theory, there are several ways of dividing the banking operations. In principle, any of the divisions has its advantages and disadvantages, and to some extent one is more or less acceptable, or not acceptable. Over time, starting from the objections that have imposed themselves in theory and practice as decisive in the classification of banking operations, the clasification that is currently most widely accepted, and which includes the tripartite division of banking operations, has been determined. According to this clasification, banking activities can be divided into three basic groups: "active banking operations (banking operations in which a banking organization appears in the role of a creditor); passive banking operations (banking operations in which the bank appears in the role of a debtor); neutral banking operations (banking operations in which certain specialized banking services are regulated, in such a way that the bank in these operations is neither in the role of creditor, nor in the role of debtor in relation to monetary claims)" (Carić, 2007, p. 18).

According to the given classification, a letter of credit belongs to a neutral banking business, which means that "a bank is only an intermediary in performing business between its clients in order to facilitate it, and it has the right to commission for performing its work" (Mastilović, 2019, p. 774). Although its "gaining increasing importance in domestic payments" (Mastilović, 2019a, p. 99), the letter of credit is an important instrument of international payments, where the role of international banking in international

payments is unavoidable because all transactions take place through authorized banks and/or their foreign correspondent banks with which banks have opened accounts" (Milenković, 2010, p. 15).

3. The legal concept and characteristics of a letter of credit as business activities

According to Vukadinović (2012), "the term letter of credit derives from the Latin word accreditivum and in the legal sense means the power of attorney of one person to make a payment to another authorized person" (p. 791). Vojnić Hajduk (2019) notes that "a letter of credit is a legal transaction that arises from the conclusion of a contract in regard to the opening of a letter of credit, on the basis of which a statement on the opening of a letter of credit is given" (p. 284). In legal theory, a letter of credit is in principle defined as "a set of legal relations in which the bank, on the order of its client and in accordance with his instructions, makes payments to the user, without any conditions or if the user meets certain conditions" (Mastilović, 2019, p. 775).

In the context of the above, it is worth mentioning the review made by Ćirić (2018), which under international letter of credit means "neutral banking business when the letter of credit bank, at the request of its client (principal) makes available, or issues an order to its bank correspondent, to the third party (user, remitter), to make available the amount of money indicated by the letter of credit at a certain time, provided that the user presents and submits to the bank proper "goods" documents provided as a condition for payment of the letter of credit" (p. 473).

Emphasizing the importance of letters of credit as a complex business, Milenković Kerković and Spirović Jovanović (2013) state that "the essence of a complex letter of credit transaction lies in the fact that goods are symbolically represented by "goods documents", and that the role of documents is representative goods is three ways: the goods have been shipped, the goods is comply with the provisions of the contract, and that after payment by the bank, and therefor by taking over the documents, the buyer acquires ownership of the goods, without its physical presence" (p. 363).

"From the point of view as a banking business," a letter of credit is a rather complex banking service business. It is a transaction in which one legal person, a letter of credit bank, undertakes by order of another person, a client (debtor of a financial obligation in the main transaction), to personally or through another bank (associate bank) pay a certain amount of money to a

third party, if he request it within the seted deadline" (Jovanović et al., 2020, pp. 524–525). By its legal nature, "a letter of credit is a type of instruction (assignment) of the obligation law, where the subject of it is the payment of money" (Jovanović et al., 2020, p. 525).

Therefore, the essence of the letter of credit is to, regardless of the spatial distance between the seller and the buyer, ensure that the buyer receives the goods he ordered (both qualitatively and quantitatively), and that the seller has certain guarantees that the buyer will pay for the goods he received. A letter of credit therefore protects both parties – the buyer and the seller, and the bank certainly appears as a third party.

Continuing in the context of the above, Leon points out that the most important characteristic of a letter of credit is actually its reliability, ie security of payment. Therefore, parties who would otherwise be reluctant to enter into a transaction are encouraged to participate because they can rely on a secure source of credit and thus more accurately assess possible business risks (Leon, 1986, p. 432).

4. Legal relations in the letter of credit

At least three entities appear in the letter of credit. This means that three entities will certainly appear in each letter of credit transaction, but it is not excluded that a fourth entity will be involved in this transaction, if there is a need for that in a specific transaction. Entities in the letter of credit that certainly appear are:

- Client of the bank who gives the order for opening a letter of credit (debtor from the main business) – the ordering party;
- The person in whose favor the letter of credit was opened (creditor from the main business) – the user of the letter of credit;
- Bank to which the order for opening a letter of credit was sent – letter of credit bank.

These are subjects "between which legal relations are established and therefor have their own independent legal nature and which is established mutually separated, independent and autonomous, but aslo still mutually conditioned, so that together they form a legal unity" (Babović, 2021, p. 452).

With the help of a letter of credit, "the ordering party fulfills some of its financial obligations from a certain economic contract (payment of the purchase price, payment of the construction price, etc.), regardless of is it clearly seen from the letter of credit itself. To this end, this subject gives an

order to "his" bank to open a certain type of letter of credit with his or another bank (depending on the basic agreement between the principal and the user of the letter of credit)" (Antonijević et al., 1982, p. 273).

The user of the letter of credit is the person in whose favor the letter of credit was opened, which means the person "who should be paid the amount specified in the letter of credit, after fulfilling the conditions (usually a seller of goods or a service provider – eg contractor, etc.)" (Antonijević et al., 1982, p. 273).

A letter of credit bank is considered to be a banking organization that accepts the order for opening a letter of credit, which is usually the bank of the ordering party, and thus takes over the service of this neutral banking business, exactly according to the instructions given in the order.

The fourth entity that may appear in the business of letters of credit is the bank that fulfills the order of the letter of credit bank regarding the letter of credit that is open – named, ie intermediary bank.

The appointed bank is "any other bank that, under the authorization of the letter of credit bank, assumes certain obligations towards the user of the letter of credit. Most often it is a bank from the country of the beneficiary of the letter of credit. Designated bank is any bank, except the letter of credit bank, which received an order from the letter of credit bank to perform some action related to the letter of credit. The appointed bank can also be a confirming bank" (Gregurek & Vidaković, 2011, p. 83).

In addition, the issue of the legal nature of the letter of credit is specific and very important. Dealing with the legal nature of letter of credit, especially documentary letter of credit as a very common type of letter of credit, Milenković points out that "documentary letter of credit is a banking business that received a legal basis from a sales contract or investment contract concluded between a bank client and his foreign partner." The conclusion of this contract specifies the letter of credit clause which obliges the debtor – buyer or client to open a documentary letter of credit with his bank in favor of creditors (sellers or contractors) (Milenković, 2010, p. 22).

In modern legal theory and practice, over time, an approach has emerged according to which letters of credit are actually classified as banking service. The essence is that the bank, based on the power of attorney given to it by the client, can perform legal and all other actions agreed upon, and already during the preliminary analysis it can be concluded that "elements of the power of attorney agreement are clearly expressed in the letter of credit" (Antonijević et al., 1982, p. 272). In addition, "given the obligations that the bank assumes

towards its client, but also the powers that the client gives to the bank, it is undoubtedly an order agreement" (Antonijević et al., 1982, p. 272).

Having in mind the nature of the business and the essence of the letter of credit, according to Jovanović and associates, "by its legal nature, a letter of credit is a type of instruction (assignment) of the obligations law, in which is payment of money is the subject of cotract" (Jovanović et al., 2020, p. 525).

As it has already been said in this paper, letter of credit as a business is a rather complex banking activities, and the complexity of which is reflected, among other things, is in the number and type of legal relations that are formed between the participants. Legal relations are established between the participants in this banking business are mutually separate and independent, but in their essence still conditioned with each other, so that in the cohesion of their relations, in the general sense of letters of credit, they form a legal unity.

The following will analyze several legal relations between entities in the letter of credit, namely: the legal relationship between the principal and the letter of credit bank, the legal relationship between the principal and the beneficiary, the legal relationship between the letter of credit and the beneficiary, the legal relationship between banks participating in the letter of credit business, and the legal relationship between the correspondent bank and the beneficiary of the letter of credit.

The legal relationship between the ordering party (principal) and the letter of credit bank is created by concluding an agreement on opening a letter of credit. The letter of credit bank assumes the obligation to pay the letter of credit in its own name, for the account of the principal, and in favor of the letter of credit user. The agreement authorizes the bank to issue announcements and pay the letter of credit at the same time. Based on the contract, the principal has the right to require the bank to fulfill the obligation to announce all subject and the obligation to pay the letter of credit. If the user refuses to pay the letter of credit, it belongs to the principal. The same applies in case of revocation of the letter of credit or if the user does not meet the letter of credit conditions. This is because the coverage of the letter of credit is provided by the principal. A letter of credit bank is entitled to a letter of credit commission from the principal even when it has not been agreed. In that case, the client owes compensation in the usual amount, and if there is no custom determened, then a fair compensation" (Vojnić Hajduk, 2019, p. 289).

In this context, it is important to point out that it is quite logical and in practice automatically expected that the ordering party issues an order to open a letter of credit to a bank with which it has regular business interactive relations, and in which it has coverage (eg account).

The legal relationship between the principal and the user of the letter of credit, according to Vojnić Hajduk (2019), is "the relationship from the previous business (eg sales contract) on what basiss the letter of credit is created. By its nature, it is a sui generis relationship" (p. 290). The legal relationship between the principal and the user of the letter of credit practically indicates that there are debt-creditor relations between the principal and the user of the letter of credit (whereby the obligations of the parties are reciprocal). The basic contract is valid for these relations. In the relations between the principal and the user of the letter of credit, the letter of credit itself is only an instrument (means) for fulfilling the debtor's financial obligation (and partly the natural obligations of the other contracting party) from the basic contract. If for some reason the principal (through the bank) does not fulfill this obligation, the user of the letter of credit will not be able to point out the requirements based on the documentary letter of credit, but only the requirements based on the basic, previious business" (Antonijević et al., 1982, p. 287).

The legal relationship between the letter of credit bank and the user of the letter of credit "produces its legal effect from the day when the user was notified of the opening of the letter of credit. The user of the letter of credit has his own and direct right directed to the bank to pay the letter of credit. Also, the bank has an independent and direct obligation to the user. The obligation to pay the bank to the user is not an independent obligation. Namely, although there are two basic legal relations within letters of credit, there are no two substantively different payment obligations in them, but there is olny one and the same obligation. The conditions of this obligation are determined by the ordering party, and not by the bank in a statement by which the user is only informed about them" (Vojnić Hajduk, 2019, p. 290). As the theory also points out, in the relationship between the letter of credit and the user of the letter of credit "the user does not pay or make any promise to the letter of credit or correspondent bank in exchange for its (their) payment promises" (Kozolchyk, 1979, p. 277). By fulfilling the obligation to pay, "the bank fulfills its obligation both to the ordering party and to the user of the letter of credit" (Vojnić Hajduk, 2019, p. 290).

Legal relations between banks participating in letter of credit operations are legal relations that belong to the category of relations established by involving other banks in letters of credit, and which in theory and practice can be threefold as: legal relationship between letter of credit bank and correspondent bank, legal relationship between correspondent bank and the user of the letter of credit and the legal relationship between the correspondent bank and the issuer of the letter of credit.

The legal relationship between a correspondent bank and a letter of credit user is also a legal relationship that falls into the category of relationships that are established by involving other banks in the letter of credit business. Specifically, the legal relationship between the correspondent bank and the beneficiary of the letter of credit can be "direct or indirect, depending on whether it is an advising or confirming bank" (Antonijević et al., 1982, p. 289), and in accordance with the above may differ two situations:

1) "The advising bank is not in any direct legal relationship with the user of the letter of credit. It can be said that her role in the business with documentary credit is very limited. Its primary task is to "convey" to the user the notice of the letter of credit bank that a letter of credit has been opened in his favor and to inform him about the terms of the letter of credit. It is not in a direct relationship with the user even if it has the role of a paying bank. In both of these cases, the advising bank acts in relation to the user in the name and on behalf of the letter of credit bank."
2) "The legal position of the confirming bank is significantly different from the position of the advising bank. In relation to a letter of credit bank, it is basically a commission agent who acts according to the user of the letter of credit in his own name, and on behalf of the letter of credit bank. In that case, the certifying bank assumes an independent and immediate obligation to pay the letter of credit. This means that the user can apply for payment to either a letter of credit or a confirming bank."

5. The role and importance of banks in the structur of the financial sector in Serbia

Before presenting the structure of the financial sector in Serbia, it is necessary to say that "every bank, as well as other economic entities, performs a certain activity for profit" (Milosavljević Nikov, 2020, p. 228).

According to the Law on Banks (2005), "a bank is a joint stock company with its registered office in the Republic of Serbia, which has a license to operate from the National Bank of Serbia and performs deposit and credit operations, and may also perform other operations in accordance with law", while a foreign bank is "A legal entity with its registered outside the Republic of Serbia, in accordance with the regulations of the country of origin, and is established and registered as a bank, which has a license to operate from the regulatory body of that country and therefor performs deposit and credit operations."

According to Čatak (2013), "banks are the most visible financial intermediaries in the economy. Their importance derives from the place and

role in the economic and financial system of each national economy. Banks operate trades in the financial markets, not only by providing services to their customers, but also by trying to make a profit for their owners" (p. 94).

It should also be emphasized "that it the characteristic of highly developed financial markets put banks in the forefront when it comes to market relations and their participation in financial markets. The share of the banking sector of developed countries in the overall market relations of financial markets ranges from 25% to 70%. Such relations indicate that the development path of financial markets is directly related to the development of the banking sector" (Čatak, 2013, p. 96).

According to Ćorić (2019), "the financial sector in Serbia is dominated by banks as financial institutions, which make up about 90% of the total assets of the financial sector, and still represent the most important channel of financial intermediation in the country. Although it started from a very low base, in recent years non-banking financial intermediation has experienced rapid growth and expansion along with banks. Such developments stimulate the economy's demand for financial resources, increase household incomes and improve corporate finances as a result of economic efforts and enterprise restructuring (privatization). On the supply side, the interest of foreign investors in the Serbian financial market is growing due to higher profit margins and the prospect of EU membership, as well as the restrictive approach of the National Bank of Serbia to monetary and regulatory policy in recent years" (p. 146).

The following table will present the structure of the financial sector in Serbia, for the period 2014-2018, and then the SWOT analysis of financial institutions in Serbia in 2018 will also be presented in a table.

Table 1. Structure of the financial sector in Serbia, for the period 2014-2018

Description	**2014**	**2015**	**2016**	**2017**	**2018**
Number of institutions% in total funds of the financial sector					
Banking sector	29 (92,0)	30 (91,6)	30 (91,2)	29 (90,7)	28 (90,4)
Insurance sector	25 (5,2)	24 (5,8)	23 (6,1)	21 (6,6)	21 (6,5)
Financial leasing sector	16 (2,0)	16 (1,8)	16 (1,9)	16 (2,0)	17 (2,1)
Private pension funds	6 (0,7)	7 (0,9)	7 (0,9)	7 (1,0)	7 (1,0)
In total	100,0	100,0	100,0	100,0	100,0

Source: Ćorić, G. (2019). p. 146.

Table 2. SWOT analysis of financial institutions in Serbia in 2018

Strength – Most banks benefit from capital reserves and sufficient liquidity; – In the insurance sector, the market benefits from the presence of multinational operators; – The Belgrade Stock Exchange, although small, benefits from SEE Link membership; – Growing consumer confidence, looser credit standards for new loans and low borrowing costs increase credit growth; – Non-banking financial sector – stable and profitable, with potential for further development.	**Weaknesses** – The level of non-performing loans in the banking sector, although reduced, remains high; – The number of listings on the Belgrade Stock Exchange is limited (and state ownership in many companies remains high).
Opportunities – The upcoming EU membership will open numerous ways to invest in the financial market in Serbia; – Increasing the rate of ownership of houses, cars, will stimulate the demand for non-life insurance; – The recent entry of a new fund management company indicates growth potential in the investment sector.	**Threats** – Support for the EU process is declining in some sectors, potentially jeopardizing membership; – The economy relies heavily on the EU and Russia, and a decline in any market could hamper growth; – Costs of receivables can reduce margins and force smaller insurance companies to leave the market; – Unresolved relations with Kosovo could negatively affect investor confidence and bank stability.

Source: Ćorić, G. (2019). p. 148.

6. Conclusion

Market globalization and internationalization of trade significantly affect regional and national ways of doing business, economic trends, economic balances, as well as competitive positions in the world knowledge and capital market. The topic of letters of credit as a service of banking business is very current, scientifically and socially justified, and important for domestic and foreign trade payments.

Banks as important financial institutions, due to globalization, deregulation and expansive development of information and communication technologies.

They have passed the development path from traditional business (in which they had the primary role of financial intermediary) to modern banking business framework in which they maintained their competitive positions, but have expanded their business to other, more profitable activities. As can be seen in the research part of the paper, in the financial sector in Serbia, banks dominate as financial institutions, which make up about 90% of the total assets of the financial sector, and still represent the most important channel of financial intermediation in the country.

An important issue that is analyzed in this paper is the legal relations between the subjects, having in mind several important facts. Namely, letter of credit is primarily conditioned business, because in every specific business through letters of credit there is a need for certain documents, on the basis of which specific business is enabled. Then, letter of credit is also a rather complex banking business. The complexity of which is reflected, among other things, is in the number and type of legal relationships that are formed between the participants. In this regard, the paper analyzes several significant legal relations between entities in the letter of credit: legal relationship between the principal and the letter of credit bank, legal relationship between the principal and the beneficiary, legal relationship between the letter of credit and the beneficiary, legal relations between participating banks in letter of credit operations and the legal relationship between the correspondent bank and the letter of credit user.

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PRAVNI ODNOSI IZMEĐU SUBJEKATA U AKREDITIVU SA OSVRTOM NA ULOGU I ZNAČAJ BANAKA U STRUKTURI FINANSIJSKOG SEKTORA U SRBIJI

REZIME: Banke su najvidljiviji finansijski posrednici u ekonomiji. Njihov značaj proizilazi na osnovu mesta i uloge u privrednom i finansijskom sistemu svake nacionalne ekonomije. U finansijskom sektoru u Srbiji banke su najznačajnije finansijske institucije i čine oko 90% ukupne imovine finansijskog sektora. Tema akreditiva kao uslužnog bankarskog posla je izuzetno aktuelna, naučno i društveno opravdana i značajna za unutrašnji i spoljnotrgovinski platni promet. Akreditivno poslovanje je složen bankarski posao, čija se složenost ogleda između ostalog i u broju i vrsti pravnih odnosa koji se formiraju među učesnicima. Imajući u vidu rečeno, u radu su analizirana pitanja pojma i klasifikacije bankarskih poslova, zatim pravnog posla akreditiva, te pravnih odnosa u akreditivu. Istraživački deo rada se bavi ulogom i značajem banaka u strukturi finansijskog sektora u Srbiji.

***Ključne reči**: akreditiv, pravni odnosi u akreditivu, bankarski poslovi, finansijski sektor, Republika Srbija.*

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MICROECONOMIC ASPECTS OF SUSTAINABLE DEVELOPMENT – IMPORTANCE FOR MARKET ECONOMY

ABSTRACT: The subject of the paper is a connection between certain microeconomic aspects of importance for the functioning of modern organizations in the context of sustainable development. Modern companies must be open to modern ideas, they have to become competent in viewing different problems from different perspectives, become more flexible and sensitive to the market warnings and be ready to implement the changes in the process of management. Nowadays, in a situation of a big suspense, companies are facing with more complex goals, the evolution of work organization towards its self-government and the generation of flexible working forms, with an emphasis being put on the improvement of the employees'skills and the development of some new models such as a 'career without borders'. Some research has found that when creating a model of the modern market economy, it is necessary to take into account almost all the details such as sustainable development, the development of knowledge and competences-based companies, giving employees the opportunity to build the companies by themselves using the temporary management and networking. In the process of development of a modern organization, there should be taken into account certain factors in the process of its functioning such as both internal and external requirements, the employees predispositions, in other words all the presumptions

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involved in the question of entrepreneurial activity. The aim of the paper is to present the selected microeconomic aspects of importance for the functioning and improvement of the work of organizations in turbulent market circumstances according to the sustainable development. The work is intended for all those who operate in a modern business environment, regardless of the form of the organization or a type of activity.

Key words: *microeconomic aspects/ sustainable development/ enterprise, market economy*

1. Introduction

Because of the big suspense, companies are facing with the complex goals, the evolution of work organization towards its self-government and the generation of the flexible working forms, with an indication of improving the skills of employees and the development of some new models such as a 'career without borders', reducing chances to achieve company outcome through control of hierarchy and on improving skills of the employees. Modern managers have been accepted all those working styles and took into account all the resources, in the accelerated market environment, like marketing, sales, production, financial, organizational and other resources. Companies operate during the Fourth Industrial Revolution. As some author interpreted this means that the industry is becoming more "intelligent" through comprehensive exchange of data, predictable analytics and the use of the Internet (Porter & Heppelmann 2015; Lenka et al., 2017). A new way of doing business is necessary (Iansiti & Lakhani 2014; Cenamor et al., 2017) and that is directly related to the company's capacities (Imran, 2018 ; Rußmann et al., 2015; Vaschneck et al., 2016). The digital economy is not limited to the IT sector and digital companies. The highest economic returns are achieved by switching to digital processes and implementing digital technologies in value chains in all sectors of the national economy (Tkachenko, Kwilinski, Klymchuk & Tkachenko, 2019). This paper pointed out the most important microeconomic aspects of sustainable development that affect the modern model of market economy.

2. Contemporary market economy model

The microeconomics studies different behaviors of individual economic entities depending on market conditions, in all market economy countries (Šagi & Šuvakov, 2004; Trivić & Šagi, 2004). Microeconomics is often

based on models, ie simplified reality, with which it tries to explain economic phenomena by focusing only on their main characteristics, assuming that all other parameters are unchanged (Brkić, Brkanlić, Gardašević & Vučurević, 2017). In the global economy, business management is based on market economy model factors such as (Dźwigoł, 2021, p. 100):

1. economy which is knowledge oriented,
2. development that is sustainable,
3. an organization that is sustainable,
4. networking,
5. social involvement and
6. management which is of a temporary character.

3. The concept of the knowledge economy

A knowledge-based approach is a key factor of the model of the market economy. The human capital and the innovation are the essence of this type of the economy, and they provide further the long term development (Welfe, 2009). Modern changes in the economic field, like forceful information flow, usage of information and communication tech, as well as the increased position of the overall knowledge, have lead to a concept called as stated above (Trzcielinski, 2015; Yeo & Lee, 2020). In modern economics this term is considered a trend. According to author Toffler, in the contemporary economy system, a key role is played by those terms: information and knowledge. These above mentioned innovations in economics are the consequences of the technological revolution that has imposed the interdependence of economics and science (Toffler 1997; Dworak, 2012).

KbE assumptions shape trends arising from the growing importance of this area and investments in intangible resources, ICT technologies spreadings, the information society creation (Lozano Platonoff, Sysko-Romańczuk & Moszoro, 2004). Among the elements that make up the business model, four basic strategic dimensions should be distinguished (Shafer, Smith & Linder, 2005):

1. Strategic indicators (customers, value offers, abilities, revenue, competition, offers, strategies, brands, stabilization, mission-vision);
2. Creation of the value (resources, assets, activities);
3. Value acquisitions (costs, profit, finance);
4. Network of value (customer relationships, suppliers, customer information, product and flows of the service).

As Kucznik (2019) pointed out, the knowledge-based economy consists of four pillars:

1. Environment: institutional and juridical – system of economic incentives through the financing of entrepreneurship and the removal of market barriers, primarily legal ones, than administrative and finally economic.
2. Systems of innovations: data per million inhabitants included the number of the employees in the Research and Development sector, number of scientific publications, number of technical solutions, number of technical patents.
3. Education, training, lifelong learning.
4. Per 100.000 inhabitants information infrastructure.

The concept of the economy based on knowledge can be more easily understood by pointing out the difference between industrial economy and knowledge economy, which are shown in Table 1.

Table 1. Differences between industrial economy and knowledge economy.

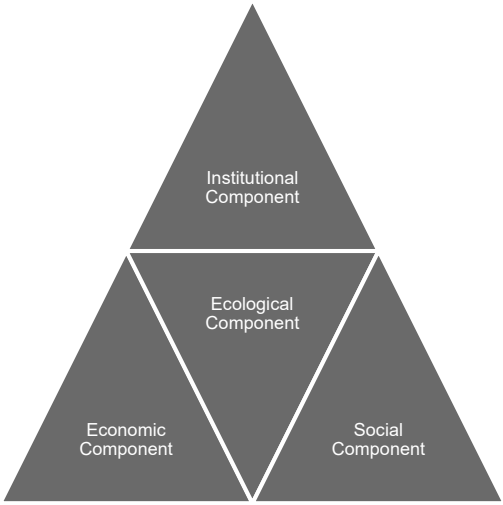
Industrial economics	Distinguishing criteria	Knowledge economy
Fast	The changes	Even faster
Long	Product life	Short
Large industrial companies	Key driver of the economy	Innovative companies
Local	Competition	Global
Stability	Emphasise on	Change Management
Cheap raw materials and labor	Competition advantage	Quality, Innovation
Financial capital vertically	Rare resources	Human Resources
Vertically	Making decissions	Distributed
Periodic, linear	Process innovation	Continious, systematic
Internal processes	Focus	Entire value chain
Pyramidal, bureaucrtic	Organizational structure	Network
Vertically	Leadership	Empowering employees
Diploma	Education requirements	Continious learning
Confrotation, preassure	Relationship managers and employees	Cooperation, teamwork
Cost	Employees are viewed as	investment

Source: Drašković, 2010, pp. 84–85.

4. A review of the sustainable development

The creation of the idea itself was preceded by two basic elements of the idea of sustainable development: the term of the development and the term of the sustainability. As the author Sharplei said (2000), these two terms could be contradictory, because the both concepts having possible counterproductive effects, although some other economists said that there is no contradiction between these two terms (Lele, 1991). Various interpretations are given to the understanding of these two terms (Klarin, 2018). The four dimensions of sustainable development are shown in Figure 1. according to Spangenberg et al., 2002.

Figure 1. The four dimensions of sustainable development.



Source: Spangenberg, Pfahl, & Deller, 2002.

The five basic models of the development based on the sustainability are defined by the the International Institute for Sustainable Development (abbreviation – IISD). These models are: (1) models based on economics, (2) models of pressure and response to the pressure, (3) models based on more capital, (4) thematic model "social, economic, environment" and (5) model of well-being of connected man and ecosystem, where the first two models are separate ones and the second are the complete models, since they contain both people and the environment (Hardi & Zdan, 1997). Adamczik (2017) stressed that the economic, environmental and social goals are balanced in the context

of running a business and under the circumstances of sustainable development. Meeting the expectations of the all stakeholders together with the optimal use of the natural resources and respects for environmental protection measures is assumption for efficient production of goods and services. The interests of customers, suppliers, emloyees, local and other interest groups are met exclusively by the company and in accordance with sustainable development. Ecological integrity, cultural diversity, equality, environmental protection and the satisfaction of basic human needs are supported through sustainable development. Principles and goals of the sustainable development, still exist despite the changes in the idea of sustainable development, awareness is at a high level on this issue. As proof of this, various forms of human creativity adopt the idea of sustainable development (Klarin, 2018). Leadership of the organization, in the long run, cannot be imagined without sustainable development, as a basis for the same leadership (Misztal, 2018).

5. Temporarily management – a new model of enterprise development

Although this term is more recent, there are a number of definitions and different versions. In order to audit some or all areas of business, the management is given to the elected manager for a certain period of time, in order to achieve the set of goals of the company (Dźwigoł, 2021). This definition is confirmed by some of the factors (Ritka, 2011):

1) removing barriers as well as market globalization are just some of the results of increasing competitive pressure;
2) the widespread use of data from the Internet has enabled consumers to have great influence and importance;
3) loss of economic security as a consequence of all possible risks (operational, financial, political and so on), causes increasing uncertainty in the business world;
4) in economic processes, the trend for innovation and flexibility has increased;
5) the growth of dynamic change, in the business environment.

Special achievements and characteristics should adorn the head of the company who is appointed temporarily to resolve issues and achieve the goals of the company (Vendt, 2011):

1) experience that enables already known methods of organization;
2) success in the profession;

3) reducing the risk of the different types of behavior as a result of a life situation which is stable;
4) when the expertise of the existing manager is not sufficient, the tentative manager is required to be prepared for various challenges;
5) readiness of the temporary manager for new tasks and goals, which should contribute to more efficient and effective implementation of the same tasks and goals;
6) satisfaction in achieving goals and achieving effects is the main driving force for a manager, not the fact that he gains power in that position.

6. Conclusion

In all of the above, as a presentation of the views of relevant authors in the field, we conclude that the following microeconomic aspects must be taken into account when setting a new model of market economy. These aspects are as follows: knowledge-based economy, sustainable development, use of temporarily management (hiring managers for special tasks) and many others such as network structures, social participation in management and so on. Creating attitudes and behaviors of employees, modernizing existing business processes, introducing new management methods, anticipating and managing change are just some of the important conditions for achieving company success in challenging business moments (Nogalski & Rutka, 2007). Networking, more efficient management, better quality of products and services, speed, are just some of the factors that are contrary to the linear understanding of business processes. The study conducted by the author Dźwigoł (2021) concluded that the following actions were characterized as crucial for building a modern market model through certain microeconomic aspects: simplification of the organizational framework taking into account the greater diversity of the scope of activities, simplification of management systems and specialization of management processes by creating strategic business units, decentralization of responsibilities for profit making, disjunction of basic and subsidiary activities, visible planning and analysis of operating and economic indicators, strengthening the accountability of some services and functions, emphasis on customers and a new way of relation to the environment, reduction of the activities of administration and maintenance. In the process of development of a modern organization, certain microeconomic factors in the process of its functioning should be taken into account, ie internal and external conditions, predispositions of employees, ie everything that makes entrepreneurial activities.

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MIKROEKONOMSKI ASPEKTI ODRŽIVOG RAZVOJA – ZNAČAJ ZA TRŽIŠNU EKONOMIJU

REZIME: Predmet rada predstavlja veza između pojedinih mikroekonomskih aspekata od značaja za funkcionisanje modernih organizacija u kontekstu održivog razvoja. Moderna preduzeća se moraju otvoriti za nova rešenja, naučiti sagledavati probleme iz različitih perspektiva, postati fleksibilnija i osetljivija na tržišne signale i biti voljna implementirati promene u procesu upravljanja. To je povezano sa činjenicom da se sada, u situaciji velike neizvesnosti, preduzeća više nego ikad suočavaju sa sve složenijim ciljevima, evolucijom organizacije rada ka njenoj autonomiji i stvaranjem fleksibilnih oblika rada i stavljanjem naglaska na poboljšanje veština zaposlenih kao i novih modela takozvanih karijera bez granica. Istraživanja su pokazala da je prilikom projektovanja savremenog modela tržišne ekonomije u neizvesnim vremenima potrebno uzeti u obzir aspekte kao što su održivi razvoj, izgradnja preduzeća na osnovu znanja i kompetencija, omogućavajući zaposlenima da zajedno stvaraju preduzeća, koristeći privremeno upravljanje i mrežnu saradnju. U procesu razvoja savremene organizacije treba uzeti u obzir određene faktore u procesu njenog funkcionisanja, odnosno unutrašnje i spoljne uslove, predispozicije zaposlenih, odnosno sve ono što čini preduzetničku aktivnost. Cilj rada jeste da se prikažu izabrani mikroekonomski aspekti od značaja za funkcionisanje i poboljšanje rada organizacija u turbulentnim tržišnim okolnostima. Rad je namenjen svima onima koji posluju u savremenom poslovnom ambijentu bez obzira na oblik organizacije i vrstu delatnosti.

***Ključne reči**: mikroekonomski aspekti, održivi razvoj, preduzeće, tržišna ekonomija.*

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THE EUROPEAN MODEL OF THE INTEGRATED BORDER MANAGEMENT

ABSTRACT: The enlargement of the European Union has called for a reevaluation of the way the external borders to be protected as a necessary consequence of the free movement of people in the European Union. It also appears to be a result of a fundamental component of the area of freedom, security and justice. The abolition of the internal border checks and a different approach to external borders followed by emerging forms of cross-border crime with a cross-border dimension, illegal migration, trafficking in human beings and terrorist threats constantly being on the rise, have requested a different approach. The lack of economic perspective, poverty, environmental disasters and wars have forced people to look for a better life elsewehere, which has led to the most important global phenomenon of the 21st century- migration. Migration issues have made us think about the important matters faced by developed countries independantly, and as such they are currently at the top of the European Union's political agenda. To respond effectively to emerging challenges and threats, the European Union has expedited the development of the integrated border management as a generally acceptable border management model, as well as a key factor in improving migration management. The paper is based on the information gathered from the open sources of the European Union institutions, as well as from personal experiences gained throughout the course of border management reform in Republic of Serbia.

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Key words: *Integrated border management, the European Union, migration, security*

1. Introduction

The issue of integrated border management has become especially important in the conditions of the multi-year migrant crisis. This international phenomenon includes a wide range of countries of origin, transit and destination or destination countries, but also different groups of migrants, and is closely related to socially harmful and dangerous phenomena of a destructive nature. People smuggling, prostitution, human trafficking, drug trafficking and other criminal activities have always been a side effect of migration movements. Today, the uncontrolled and massive influx of migrants, from conflict and/or war zones, has led to an unusual refugee/migrant crisis, which has become a source of threat to regional and global security (Bjelajac & Dragojlović, 2017), especially through various forms of expansion of Islamic religious fanaticism and terrorism (Zirojević & Bjelajac, 2013). Ever since the Schengen acquis has been integrated into the European Union through the Treaty of Amsterdam in 1997 and in response to the conclusions of the Tampere European Council of 15 and 16 October 1999, the European Union has taken various important steps towards the establishment of integrated border management (in English Integrated border management – IBM). Only in December 2001 was a discussion on "integrated border management" launched, which had taken into account the interests of the members with external borders as well as of those countries finding themselves away from them. The European Council approved of the so-called "European Concept of Border Control Management" on 7 December 2001, which provided solid grounds for further development of operational cooperation between the Member States (Council of the European Union, 2002).

Treaty on the Functioning of the European Union, Article 77 paragraph (2) item (d) lays down the objective of the gradual establishment of an integrated management system for external borders. Ever since the Schengen was integrated into the European Union in 1999, the European IBM has been gradually developing after the Amsterdam Treaty had entered into force (Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, 2007).

The European Council set out in Conclusion No. 42 that "Better management of the European Union's external borders will help in the fight against terrorism, illegal migration networks and human trafficking, therefore

the European Council asks the Council of Ministers and the European Commission to develop arrangements for cooperation between the services responsible for external border checks and examine the conditions under which a mechanism or joint services for external border checks could be set up "at the meeting held in Laeken (Brussels) on 14 and 15 December 2001" (Communication from the Commission to the Council and the European Parliament, 2002).

Therefore, the European Commission approved of a communication for both the Council of Europe and European Parliament on "Integrated Management of External Borders of the Member States of the European Union" on 7 May 2002 in keeping with the aforementioned Conclusion, which encompassed a situation analysis in the area both at an operational and normative level, and thus put forward a set of measures and actions that should be implemented at the level of the European Union (Communication from the Commission to the Council and the European Parliament, 2002).

Following this communication, the Council approved of the "EU External Borders Management Plan" on 13 June 2002, which consisted of five key components of a common integrated border management system: joint mechanism for operational coordination and cooperation, joint integrated risk analysis, personal and intraoperative equipment, a common set of laws and a division of competences between EU Member States and the European Union (Plan for the Management of the External Borders of the Member States of the European Union 2002).

Furthermore, the Council approved of the first "Catalogue of Recommendations for the Correct Implementation of the Schengen Acquis and Best Practices, External Borders, Returns and Readmission" on 28 February 2002. This was the first time the key elements of a national Strategy for Integrated Border Management and a four-tier access control model had been explained in the European Union's document. This document was also one of the key references for the implementation of the Schengen evaluation procedure, i.e., mechanism for verifying a country's implementation of the European Union's policy in the area of justice, freedom and security, which encompassed all areas of the Schengen acquis (EU Schengen Catalogue External borders control, Removal and readmission: Recommendations and best practices, 2002).

The Schengen Catalogue for External Borders and Returns was updated in 2009 based on the latest developments in the area of the EU border management. The amended catalogue represents the most comprehensive description of the implementation of integrated border management concept at

the national level and was thereby used as a key document in the development of national strategies. It is also considered an important part of the EU's common border management standards, for which reason it also represents a very important document in the context of the Schengen Evaluation.

The Commission decided to develop a "List of Common Risk Indicators" in October 2014 in form of operational guidelines for EU Member States to consult relevant databases (eg. SIS II) when carrying out checks on persons at external borders entitled to free movement in compliance with the European Union legislation. The Commission approved of a Recommendation based on the "List of Common Risk Indicators" on 15 June 2015 for the purpose of amending the Practical Handbook for Border Guards (the Schengen Handbook), whose latest amended version was approved in 2019 by endorsing the Commission's recommendations for setting up a common Practical Handbook for Border Guards" used by the competent authorities of EU Member States carrying out border checks on persons and by replacing the Commission's Recommendation C (2006) 5186 of 6 November 2006. The aim of the Practical Handbook is to set up guidelines, best practices and recommendations for border guards with regards to discharge of their duties in the Schengen area. The Handbook should also serve as a guide for border guards when taking measures and making decisions along borders where external border provisions apply. The content of the said Handbook primarily focuses on carrying out checks on persons at the border, and is based on the European Union's instruments governing border crossing points (especially the Schengen Borders Code), visas, the right to free movement under European Union law and asylum claim.

2. Management of European Union's External Borders

The Justice and Home Affairs Council oulined the scope of integrated border management for the first time at its 2,768 meeting convened on 4 December 2006 in Brussels. Ever since then, the IBM concept has been a cornerstone for border management of EU Member States. According to the conclusions set out by the Justice and Home Affairs Council, the integrated border management represents a concept that consists of the following dimensions below:

- Border control (checks and surveillance) as set forth in the Schengen Borders Code, (Regulation (EU) No. 399/2016) including relevant risk analysis and crime intelligence.
- Detection and investigation of cross-border crime in coordination with all competent law enforcement agencies.

- Four-tier access control model (measures in third countries, cooperation with neighboring countries, border check, control measures in the area of free movement, including return).
- Inter-agency cooperation regarding border management (border police, customs, police, national security service and other relevant bodies) and international cooperation.
- Coordination and conformation of EU Member States' activities with those of the institutions and other bodies of the Community and the Eropean Union.

Moreover, a continuous and successful work on integrated management at external borders, as well as on its specific components has been acknowleged and as such it consists of:

- Common set of laws, especially the Schengen Borders Code, as well as the Regulation on Local Border Traffic.
- Operational cooperation between the Member States, including cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) (Fronteks, European Border and Coast Guard Agency).
- Solidarity between the Member States and the European Community by establishing the External Borders Fund.

The passage of the European Regulation on Border and Coast Guard in October 2016 was the most important step towards the creation of the European integrated border management. Regulation 2016/1624 on the European Border and Coast Guard has paved a way for a clear legal basis and framework for the EU IBM for the first time by both describing and consolidating strategic components. To ensure the effective implementation of the European integrated border management, regulations have led to the establishement of a European Border and Coast Guard. The European Border and Coast Guard constitute the European Border and Coast Guard Agency, as well as national authorities in charge of border management, including the Coast Guard carrying out border checks.

The Council and the European Parliament approved of the Regulation on the European Border and Coast Guard on 14 September 2016 in line with EU external border policy objectives, as part of the implementation of the European Agenda on Migration and the European Security Agenda for the purpose of strengthening external governance and security at external borders of the European Union.

The speed and efficiency with which the Council and the Parliament acted upon the approval of the Regulation was exceptional, and the reason for such an approach can be largely attributed to migrant crisis to which the European Union sought answers. After being first announced by Commission President Jean Claude Juncker in his speech on 9 September 2015 (State of the Union 2015: Time for Honesty, Unity and Solidarity), the European Commission presented a legislative proposal to set up a European Border and Coast Guard on 15 December 2015, while the Regulation itself entered into force as early as 16 October 2016.

The latest European model of integrated border management is laid down in Regulation (EU) 2019/1896 of the European Parliament and Council of 13 November 2019 on the European Border and Coast Guard by repealing Regulation (EU) No. 1052/2013 and (EU) 2016/1624, wherein Article 3 sets out all 15 elements of the European integrated border management.

The primary objective of the Border and Coast Guard Regulation is to create a concept of integrated border management that would ensure, as a shared responsibility, a uniform implementation of the European integrated border management in a bid to effectively manage migration and ensure a high level of security in the EU by fully adhering to fundamental rights.

Mea sures related to the European IBM should be implemented using the four-tier access control model that consists of the following below:

- Measures taken in third countries;
- Measures taken with neighboring third countries;
- External border control measures and
- Measures in the Schengen area.

Measures in, between and across all levels should be well-coordinated and integrated at both a European and national level.

The European Integrated Border Management consists of the following 11 strategic components set forth in Article 3 of the European Border and Coast Guard Regulation, which constitute the basis for the European IBM Strategic Framework:

a) Surveillance of the state border, including measures to facilitate legal border crossings and, where appropriate, measures to prevent and detect cross-border crime at external borders, in particular migrant smuggling, trafficking and terrorism, and mechanisms and procedures to identify vulnerable persons and unaccompanied minors, and identify persons in need of international protection or seeking such protection, providing information to such persons and referring such persons where necessary.

b) Search and rescue operations for persons in distress at sea initiated and conducted in compliance with Regulation 656/2014 and in compliance with international law, which take place in situations that may arise during border surveillance operations at sea.
c) Internal security risk analyses and threat analyses that may affect the functioning or security of external borders.
d) Exchange of information and cooperation between the Member States in the areas covered by the Regulation, as well as exchange of information and cooperation between the Member States and European Border and Coast Guard Agency, including support coordinated by the European Border and Coast Guard Agency.
e) Inter-agency cooperation between national authorities in each Member State responsible for border checks or other tasks performed at the border, as well as between return authorities in each Member State, including regular exchange of information through existing information exchange tools, including, where appropriate, cooperation with national authorities responsible for the protection of fundamental rights (Regulation (Eu) No 1052/2013)
f) Cooperation between relevant European Union institutions, bodies, offices and agencies in the area covered by the Regulation, including the regular exchange of information.
g) Cooperation with third countries in the areas covered by the Regulation, in particular targeting neighboring third countries and those third countries identified in the risk analysis as countries of either origin or transit for illegal migration.
h) Technical and operational measures in the Schengen area with regards to state border control designed to better address the issue of illegal migration and combat cross-border crime.
i) Return of third-country nationals to whom return decisions issued by a Member State apply.
j) Use of state-of-the-art technology, including large information systems.
k) Quality control mechanisms, in particular the Schengen acquis evaluation mechanism, vulnerability assessment and possible national mechanisms to ensure the implementation of European Union law in the area of border management.
l) Solidarity mechanisms, in particular European Union funding instruments.

Fundamental rights, education and training, as well as research and innovation represent comprehensive elements in the implementation of the European integrated border management. Coherence and interaction between all these components and topics are key to the efficient and uniform implementation of the European IBM across various layers of the four-tier access control model at both a European and national level. The operationalization of the European integrated border management model is performed through an interoperable strategic framework at three levels:

- Political Strategy of European Union institutions,
- Technical and Operational Strategy of the Border and Coast Guard Agency and
- Member States' national strategies.

The aim of the European Union's external border management policy is to both develop and implement the European integrated border management at both a national and European Union level (Regulation (EU) 2019/1896), which is a necessary consequence of the free movement of persons across the European Union and a fundamental component of freedom, security and justice. European integrated border management is central to improving migration management. The aim is to effectively manage the crossing of external borders, address migration challenges and potential future threats at such borders, thus contributing to tackling cross-border serious crime and ensuring a high level of internal security in the European Union. At the same time, it is necessary to act in full compliance with fundamental rights in a way that ensures a free movement of persons across the European Union. The European Union aims to ensure that its citizens live in an area of freedom, security and justice, without internal borders. The people of the European Union must be sure, wherever they move in Europe, that their freedom and security are protected in full compliance with the values of the European Union, including the rule of law and fundamental rights.

3. Challenges in Managing European Borders

Both new and complex threats have emerged in recent years that point to the need for further synergies and closer cooperation across all government levels. Many of today's security issues stem from the instability in the European Union's immediate neighborhood, as well as from the changes in forms of radicalisation, violence and terrorism, and organized crime. Threats are becoming more diverse and international, as well as cross-border and

cross-sectoral in nature. The key challenges in managing European borders are in close connection with detailed and rapid control of evergrowing flow of passengers and vehicles at border crossing points, especially in sense of air transport, possible mass influx of illegal migrants, secondary movements, cross-border organized crime and terrorism. Illegal migration routes and "modus operandi" are changing rapidly hand in hand with new challenges.

Every aspect of the European Integrated Border Management in 2020 was dominated by the COVID 19. The key indicator underpinning this fact is the significant decline in the number of passengers crossing the external borders of the European Union, which was seen in the two-thirds lower flow compared to 2019. The number of detected illegal border crossings has been reduced by a much smaller percentage. Therefore, the need for continuous efforts to protect the European Union's external borders had been expressed. In addition, the year 2020 will be remembered as the year of reintroduced internal border checks across Europe, which is a sharp reminder to EU citizens of the historical achievement represented by the Schengen area based on the free movement of people and capital. Border and Coast Guard services were faced with a sudden shortage of human resources brought about by large numbers of staff being either on a sick leave or in quarantine, when observed from a standpoint of a more complex operational environment. Although the number of passengers had decreased, the complexity of border procedures increased together with reintroduced measures against the spread of the virus (Fronteks, Risk Analysis for 2021).

In the course of discharge of their duties, border services face a variety of border-related offenses, including trafficking and smuggling of people, goods, narcotics, weapons, forged travel documents, stolen property, vehicles, etc.

To increase the internal security of the Member States and improve the ability to detect illegal activities, border management authorities should be engaged in investigating the above-mentioned types of crimes. Partaking in such investigations increases the know-how of competent authorities' members with regards to "modus operandi" and illegal migration routes, forms of counterfeiting and smuggling, all of which greatly facilitates the development of risk profile indicators.

4. Establishing National Integrated Border Management Strategies

The European model of integrated border management should be implemented in form of a joint responsibility of both the Border and Coast Guard Agency and national authorities responsible for border management,

including coastguards carrying out maritime border surveillance operations, as well as any other border control tasks. While the Member States' primary responsibility is to manage their external borders in their own best interest and in the best interest of all Member States, the Border and Coast Guard Agency should support the implementation of EU measures regarding the management of external borders through strengthening, evaluating and coordinating actions of the Member States with regards to implementation of those measures.

The national authorities responsible for border management, including coastguards carrying out border checks, will therefore establish their own national strategies for integrated border management in compliance with Article 3 of the Border and Coast Guard Regulation. The Member States ensure the management of their external borders in their own best interests and in the common interest of all Member States in full compliance with EU law and Technical and Operational Strategy referred to in Article 3 (2) and in close cooperation with the Agency.[1]

Since the Member States have primary responsibility in managing their external borders in their own best interest and in the best interest of all Member States, the effective implementation of integrated border management should be translated into national efforts.

National integrated border management strategies should guarantee the unified development, planning and implementation of integrated border management at the national level by improving cooperation and coordination of all relevant bodies in charge of border management and return. National integrated border management strategies should also define operational arrangements for national authorities that contribute to and benefit from the support provided by the Regulation on the European Border and Coast Guard

[1] 1. The European Border and Coast Guard consists of the European Border and Coast Guard Agency ("the Agency") and of the national authorities of the Member States responsible for border management, including coast guard officers, to the extent of their carrying out national border surveillance tasks.

2. The Agency will, by decision of the Management Board and based on the proposal put forward by the Executive Director, establish a technical and operational strategy for the European integrated border management. The Agency will, where justified, take into account the specific situation of the Member States, and in particular their geographical location. The strategy must be in compliance with Article 4. It both promotes and supports the implementation of the European integrated border management in all Member States.

3. National border management authorities, including coastguards, will establish their national strategies for integrated border management if charged with state border surveillance tasks. These national strategies must be in compliance with Article 4 and the Strategy referred to in paragraph 2 of this Article.

Agency at EU level. Requirements for national integrated border management strategies are as follows:

- One IBM Strategy for each Member State.
- Gathering all relevant authorities engaged in border management and introducing them to a clear national coordination structure.
- The Strategy was developed in compliance with the political Strategy of the European Union institutions, technical and operational Strategy of the Border and Coast Guard Agency and Schengen requirements.
- Predicated on 11 components of Article 3 of the EBCG Regulation, but also covering the areas that exclusively fall under the national competence (e.g., reintroduction of internal border checks).
- Defining arrangements with regards to managing national borders, as well as partaking in relevant EU mechanisms coordinated by the EBCG Agency and other relevant EU actors.
- Clear definition of current and planned allocation of human and financial resources.
- Defining review and monitoring mechanism.
- Multi-year coverage in line with the MFF programming cycle.
- Accompanied by an Action Plan setting out key measures, time frame, activities, resources required followed by monitoring arrangements.

All relevant stakeholders must be involved in the Strategy development process to ensure broad commitment, quick approval and effective implementation. Although the key responsibility for drawing up the document lies with border management agencies, other stakeholders should be consulted if necessary.

It is important to keep in mind the fact that only certain chapters of the Strategy (and Action Plan) can be compiled through information obtained from individual agencies, whereas significant parts must be developed jointly to ensure that the document reflects jointly agreed position of the agencies involved. Strategies that meet only the needs of a border management agency can be considered useful sector-specific strategies and do not meet EU requirements.

The Strategy paper should cover both the current and projected border situation at a national level, including major risks, threats and vulnerabilities, which should be based on a comprehensive risk analysis and vulnerability assessment, which could be presented in a form of an independent document.

5. The Republic of Serbia and Implementation of the European Integrated Border Management Model

Since the strategic goal of the Republic of Serbia is to join the European Union, the goal as such implies legislative, administrative and institutional compliance with European standards. For that reason, the Republic of Serbia has opened accession negotiations with the European Union, and thus drew up an Action Plan for Chapter 24 in accordance with the criteria for opening Chapter 24, which envisaged "Approval of the Multi-Annual Integrated Border Management Strategy in line with the 2006 EU Concept, including measures to improve inter-agency cooperation and exchange of information through joint operational work at the border".

The Action Plan for Chapter 24 represents the key strategic and operational framework for action of the Government of the Republic of Serbia, in particular the action of the Ministry of Interior, as well as of other competent ministries. Border security issues are one of the most important areas covered by this Plan, and the Government of the Republic of Serbia is firmly committed to fulfilling its obligations through the accession process to the European Union.

The Republic of Serbia has paid special attention to border control so far and had thus approved of its first Integrated Border Management Strategy complete with the accompanying Action Plan back in 2006, the second one in 2012, and the third one in 2017, which were fully brought in line with the EU guidelines for the Western Balkans. By implementing these documents, the Republic of Serbia has made significant progress in complying national legislation with European Union law. Both administrative and institutional capacities of all competent services have been significantly enhanced, whilst the level of technical equipment of all competent agencies engaged in border control has been raised. All aforementioned represents a clear indication to foreign partners that the Republic of Serbia is ready to contribute to security in the region and become a reliable partner of the EU in controlling its borders. Effective border management and real border security are extremely important to the region, but also to Europe as a whole and at the same time represent an important factor in the accession process to the European Union, which the countries in the region are conducting for full membership (Strategy of integrated border management in the Republic of Serbia, 2017).

Moreover, by following the obligations of the Ministry of Interior from the revised Action Plan for Chapter 24, as well as the need to reform the system in the area of border management, a new public policy document was

planned for approval in 2021 in the area of integrated border management in the Republic of Serbia in compliance with European Union legislation.

Proposed integrated border management Strategy in the Republic of Serbia for the period 2022-2027 complete with an Action Plan for the implementation of the Strategy for the period 2022-2024 was fully prepared in line with the form, content, procedure and time frame set out in the methodological recommendations of the European Commission. Furthermore, during the course of its preparation, the Report on the Implementation of the Action Plan for the Implementation of the Previous Integrated Border Management Strategy for the period 2017–2020[2] was taken into consideration, which in its final part contains an analysis of the extent of attained objectives.

Since the strategic goal of the Republic of Serbia is full accession to the European Union, the Republic of Serbia has introduced a new concept of integrated border management in the said Strategy to bring it in agreement with the acquis communautaire by paying close attention to the accession negotiation phase in which the Republic of Serbia is with the European union at a specific moment in time, as well as to legal heritage, normative and organizational culture, and to positions in relation to neighbouring countries. The said planning documents represent a development document of the Republic of Serbia primarily aimed at developing four services responsible for the implementation of integrated border management policy – Ministry of Interior, Ministry of Finance – Customs Administration, Ministry of Agriculture, Forestry and Water Management – Veterinary and Plant Protection Directorate.

6. Conclusion

Significant measures have been taken at both the operational and legislative level in the last decade in terms of progressive development of a common integrated border management system arising from the change in the institutional structure introduced by the Lisbon Treaty and further legislation development. Significant steps have been taken in the European Strategy for Integrated Border Management. Such steps have led to approved Schengen Borders Code, implementation of modern IT solutions (specifically the second generation of SIS and Visa Information System), creation of the External Borders Fund and its successor – the Internal Security Fund, and last but not least, establishment of the Border and Coast Guard Agency. European

[2] In the author's archive.

integrated border management is a concept that requires a high degree of specialisation and professionalism across all relevant institutions engaged in border checks, for which reason it is crucial that its implementation be methodologically implemented across all levels, especially in those countries that see their future in the European Union.

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EVROPSKI MODEL INTEGRISANOG UPRAVLJANJA GRANICAMA

REZIME: Proširenje Evropske unije uticalo je na preispitivanje načina na koji se štite spoljne granice kao neophodna posledica slobodnog kretanja ljudi u Evropskoj uniji i kao rezultat fundamentalne komponente područja slobode, bezbednosti i pravde. Ukidanje unutrašnjih graničnih kontrola i drugačiji pristup spoljnim granicama praćen pojavom oblika prekograničnog kriminala, ilegalnih migracija, trgovine ljudima i terorističkih pretnji, koje su u stalnom porastu, zapravo su i dali povoda za drugačijim pristupom. Nedostatak ekonomske perspektive, siromaštvo, ekološke katastrofe i ratovi primorali su ljude da traže bolji život negde drugde, što je dovelo do najvažnijeg globalnog fenomena 21. veka – migracija. Pitanja vezana za migracije navela su nas da razmišljamo o važnim stvarima sa kojima se nezavisno suočavaju razvijene zemlje i kao takve su trenutno na vrhu političke agende Evropske unije. Da bi efikasno odgovorila na nove izazove i pretnje, Evropska unija je ubrzala razvoj integrisanog upravljanja granicom kao opšte prihvatljivog modela upravljanja granicom, kao i ključnog faktora u poboljšanju upravljanja migracijama. Rad je zasnovan na informacijama prikupljenim iz otvorenih izvora institucija Evropske unije, kao i na ličnim iskustvima stečenim tokom reforme upravljanja granicom u Republici Srbiji.

Ključne reči: *Integrisano upravljanje granicom, Evropska unija, migracije, bezbednost.*

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UNDERCOVER INVESTIGATOR IN SPECIFIC COUNTRIES OF THE EUROPEAN CONTINENTAL LEGAL SYSTEM

ABSTRACT: Elaborate mechanisms of a criminal activity, a high level of secrecy, a hierarchical structure and diversification of tasks among the members of the organized criminal group, make it a complex phenomenon. Due to its specificity, uncovering the crimes and perpetrators of the organized crime requires the use of special methods and techniques. One of them is a special evidentiary action, the deployment of an undercover investigator, which is used to obtain evidence and information necessary for uncovering criminal acts, as well as the organized criminal groups. The purpose of this paper is to present the specific characteristics of this special evidentiary action in certain countries of the European continental legal system, where the covered questions are, when, in what way, and under what conditions a certain person can act as an undercover investigator.

Keywords: *special evidentiary procedure, undercover investigator, organized crime, police officer.*

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1. Introduction

Today, more than ever, on the one hand, states face numerous threats and challenges, and on the other hand, they are not able to respond to various forms of threats (Bjelajac, 2016). Intelligence and security services, as indispensable bearers of security functions, through their activities tend to affect the lives, survival and dignity of potentially endangered people on a daily basis, which ultimately reflects on the level of human development, governance and rule of law in the modern society that is turbulent in many ways, faced with numerous contradictions and difficulties. The diverse nature of security threats logically conditions different reactions to their prevention (Bjelajac, 2017). Organized criminal groups are characterized by closed circle groups, the commitment of group members, intertwining of legal and illegal affairs, a high degree of secrecy, and all of this creates great difficulties for the authorities when uncovering their crimes and perpetrators. Hence, analog to such a complex form of criminal activity, methods used for "classic" crime can be proven inadequate. Thus, "in essence, organized crime is a specific form of modern professional crime that differs in many aspects from traditional forms of criminal association, as well as from classic forms of crime on both national and international proportion" (Matijašević-Obradović, 2017, p. 393).

As a response to this type of crime, governments have had to resort to new methods of suppressing crime in order to improve the efficiency of uncovering and solving these types of crime. Our current Law on Criminal Procedure from 2011, much like other modern criminal procedure legislation, prescribes the possibility of undertaking special evidentiary actions. In the literature, special evidentiary actions are also called special investigative techniques, covert operations, special measures, special investigative methods, and other similar terms. Whatever term we use, it encompasses a secret, covert operation that is carried out with the help of appropriate technical means suitable for gathering evidence without the knowledge of the person against whom the measures are applied (Vuković & Bošković, 2012). Therefore, special evidentiary actions represent certain ways of gathering atypical evidence and are applied only concerning certain criminal offenses, and their wide application is never considered because it would jeopardize their exceptional character and make them less efficient, while also unjustifiably restricting certain human rights and freedoms (Matijašević & Zarubica, 2020).

One of the special evidentiary actions prescribed by law is the deployment of an undercover investigator. The Undercover Investigator Institute is one of the most effective instruments in the fight against organized crime. In other words,

the use of undercover investigators as a method of infiltration into the criminal environment, over time, became an unavoidable criminal-strategic institute when it comes to uncovering and proving organized crime (Jevremović, 2020, p. 60).

In this research, special emphasis will be placed on defining the institute of undercover investigators and determining its basic characteristics, then on the analysis of this special evidentiary action from the aspect of legal solutions in comparative law through the lens of the continental legal system. In addition, special emphasis will be placed on the formal and material conditions for hiring an undercover agent and on the characteristics of the instute form the aspect of the current criminal procedure legislation of the Republic of Serbia.

2. Undercover investigator in German Law

As a special piece of the evidentiary procedure, the undercover investigator, as far as European countries are concerned, was first envisaged in German criminal law in 1989. In German legal theory and practice, the term undercover investigator implies a police officer who conducts investigations under an assigned, altered, or false identity, and who has the right to participate in legal transactions under such identity, including signing contracts, establishing companies, participating in court proceedings and similar activities. German author Koriath (1996) defines an investigator as "a police officer with a changed identity who, acting in secret for a certain period of time, in contact with criminals, obtains data and information useful for uncovering, solving and preventing crime related to organized crime" (p. 535). In Germany, the main condition for hiring an undercover investigator is the existence of initial suspicion or the basis of suspicion that a serious crime was committed, or when there is a danger of recurrence of criminal activity, such as drug abuse, arms smuggling, counterfeiting money, or if the crime was committed by a criminal organization.

The use of this institute is prescribed by the provisions of the Criminal Procedure Code and the police laws of certain German states. In the Republic of Germany, there are three types of participants in secret investigations: an undercover investigator whose identity has been changed; police officers whose identity has not been changed, they are not publicly known, but only occasionally act covertly; and informants, persons who often or occasionally provide information in order to combat crime, while their identity remains a secret, and it's not disclosed to the public.

The legal provision for undercover investigators is located in Article 110a of the German Code of Criminal Procedure. Article 110a reads as follows:

Undercover investigators may be engaged in uncovering criminal offenses, if there are sufficient grounds that show that a criminal offense of special significance was committed: 1) in the area of illicit trafficking in narcotic drugs or weapons, or counterfeiting money or securities; 2) in the field of state security; 3) if the person is regularly engaged in committing criminal offenses or, 4) if the offense was committed by a member of a criminal group or in some other organized manner (Strafprozeßordnung, 1987).

Germany has reduced the application of this provision to a limited number of circumstances, but it does not provide a list of specific crimes. However, the offenses covered are serious, and this will help to meet the conditions of necessity and proportionality. The duration of the measure of deploying an undercover investigator can be approved for a period of up to 3 months, but for justified reasons it can be extended, the maximum duration is not determined, but it can be extended as long as there are justified conditions for its application.

The next provision of the same Law, 110a (1) stipulates that undercover investigators may also be engaged in shedding light on serious criminal offenses when certain facts indicate the danger of recidivism. The use of undercover agents is allowed only when a serious crime cannot be solved in any other way or if its investigation would be associated with disproportionately great difficulties. In addition, undercover investigators can be used to shed light on serious crimes when the severity of the crime requires it, and other measures would likely not succeed.

Article 110b (1) stipulates that approval must be given by the public prosecutor (except in urgent cases, where subsequent approval is required within three working days, and in this case, the deployment is decided by the competent police chief), but only after the expressed willingness of the police officer who will act as an investigator under a fake identity. The deployment of an undercover agent is allowed only with the consent of the competent prosecutor. If there is a danger of delay, and the decision of the prosecutor's office cannot be obtained in time, it should be obtained later as soon as possible, with the measure being revoked if the prosecutor's office does not approve it within three working days. The approval is issued in writing and for a certain period of time and must be explained in detail. However, judicial approval is required in cases when:

1. the investigation is pointed toward a specific individual, or
2. in cases when the undercover agent is going to enter private premises that are not publicly accessible – then the approval of the court is required. If there are circumstances that indicate a danger of delay,

> the approval of the prosecutor is sufficient. If it turns out that the decision of the prosecution cannot be obtained in time, that approval must be obtained later as soon as possible. The measure is revoked if the court does not approve it within three working days.

Article 110b also establishes the anonymity of undercover agents as witnesses in the court proceedings, while Article 110c limits their powers in relation to entry into private premises. Undercover investigators may use their false identities to enter private premises with the consent of an authorized person. Consent must not be coerced by misrepresenting the right of access beyond that resulting from the use of a false identity. Therefore, according to German legislation, an undercover investigator can enter private premises under certain conditions, for which he primarily needs the approval of the court, but in case of urgency, the approval can also be given by the public prosecutor. It is allowed to issue, change and use appropriate documents if necessary to create and maintain a fake identity under which the investigator operates. The undercover investigator must make a report on each undertaken investigative action and submit it to the acting public prosecutor.

Article 110d stipulates that the persons into whose private premises the investigator entered have to be notified of the application of this measure unless it directly affects the security of the undercover investigator or his further engagement, investigation, or public safety. The entire documentation on the application of this institute is being kept in the Public Prosecutor's Office, while Article 110e emphasizes that if the application of this measure gathers evidence of a crime or perpetrator that was not covered by a specific decision, such evidence may be used in other criminal proceedings, but only if it relates to criminal offenses for which the deployment of an investigator may be authorized.

The German Criminal Procedure Code does not contain a provision that explicitly prohibits the commission of criminal offenses by an undercover investigator, nor encourages a police officer with a changed identity to commit a criminal offense, but the prohibitions prescribed in another document, the Common Guidelines.

According to the Common Guidelines of the Ministers of Justice and Interior of the federal states, undercover investigators may not commit a crime during their engagement, while encroachments on the rights of third parties are allowed only within the applicable laws. General legal authority to commit criminal offenses cannot be given based on Article 34 of the Criminal

Code, which regulates the institute of extreme necessity. In exceptional cases, a justification or exemption for the conduct of individual officers may be considered, assuming an exemptive urgency. If there is a violation of legal property available to authorized persons, the illegality of such an act may not be considered from the standpoint of presumed consent (Marinković, 2010, p. 425).

3. Undercover investigator in French Law

In the French Republic, the institute of the undercover investigator is applied only in exceptional cases, and as a last resort, since in this country priority is given to the protection of the rights and freedoms of citizens.

This measure can be approved only if the application of other simpler means and methods that interfere less with human rights does not bring the expected results, and thus at the same time the rational use of this covert investigative measure only in the most complex cases and at a highly professional level must be ensured. This measure is applied to uncover criminal offenses related to drug trafficking, while legally prescribed cooperation with other law enforcement agencies further strengthens the legality and professionalism of this type of police operation (Jović, 2008, p. 175).

The use of the institute of undercover investigators in France is regulated by the provisions of the Criminal Procedure Code (Code de procédure pénale, No.1719, 2020) and the Law on the illicit use of narcotics. With the approval of the competent pre-trial judge or the public prosecutor, this measure can be taken, while the police are obliged to provide detailed information on the fulfillment of the conditions for its undertaking. Infiltration into the criminal environment, the entire mechanism of this measure, can be undertaken only by police officers or customs officers, in cooperation with the judiciary organs, unlike in the case of Germany, ordinary citizens cannot "infiltrate" a criminal organization and act as an undercover investigator. It is forbidden for an undercover investigator to incite the commission of a crime, for example, to incite the suspects of buying drugs or selling narcotics. However, an investigator will not be prosecuted if, during his/her engagement, with the approval of a judge or public prosecutor, he/she possesses, buys, transports or delivers narcotics for the purpose of his/her mission, under the mentioned laws. The duration of the measure of deployment of an undercover investigator is approved for a period of up to 4 months, while the maximum duration is not determined, it can be extended as long as there are conditions for its application.

Under the law, an undercover investigator can act as a buyer if he gathers evidence and exposes the core of a criminal organization. In these cases, the appeal of the defendant based on incitement to commit the crime was always rejected by the court, because the provocation neither caused nor affected the crime, but was only a confirmation of the crime which the defendant would have committed regardless. It is not legally allowed for the undercover investigator to commit a crime to successfully infiltrate a criminal organization, but if the undercover investigator committed a crime during the operation, with the aim of not being uncovered by members of the criminal organization, the illegality of such crime is excluded (Jović, 2008, p. 178).

Members of the investigative bodies authorized to conduct a covert operation will not be criminally liable for certain acts if:

1) Collect, hold, transport, or deliver substances, goods, products, documents, or information arising out of the commission of criminal offenses or used for the commission of such offenses.
2) Use or make available to persons dealing with these criminal offenses means of a legal or financial nature, as well as means of transport, deposit, accommodation, storage, and telecommunications.

The real, true identity of a police officer who has infiltrated a criminal environment under a false identity must not be revealed at any stage of the proceedings. Questions posed to the undercover investigator during the proceedings must not be aimed at revealing, directly or indirectly, his true identity. A criminal conviction may not be rendered solely based on statements made by police officers who conducted a covert operation, however, when police officers testify under their true identity, the provisions of this Article shall not apply.

4. Comparative legal analysis of the institute of undercover investigator in the ex-Yugoslavian countries

All ex-Yugoslavian states prescribe, in their criminal legislation, prescribe the institute of an undercover investigator in the same or similar matter, but there are some differences. The legislation of some countries also envisages the use of criminals, who can act as undercover investigator. In Montenegro. Croatia and Bosna and Herzegovina informants can be hired, while in Serbia only members of the police force can be undercover investigators. As for the material conditions for using an undercover investigator, in all the mentioned countries of ex-Yugoslavia, there is an identical legal solution, and that is

the existence of reasonable doubt that a crime was committed for which the measure of the undercover investigator can be determined if evidence cannot be collected in another way or it would be difficult to do so. About the criminal offenses in respect of which this particular evidentiary action may be ordered, this is regulated similarly in all the countries mentioned, by providing a list of offenses for which this measure may be imposed. In the Republic of Serbia, the Criminal Procedure Code has largely narrowed the range of criminal offenses for which an undercover investigator may be used, as it stipulates that this institute may exceptionally be determined only for criminal offenses within the competence of the special prosecutor's office. These are the most serious crimes of organized crime, terrorism, corruption, and war crimes. Contrary to this solution, a rather extensive, broad framework of solutions is envisaged in Bosnia and Herzegovina, as this measure can be used for all criminal offenses punishable by imprisonment of three years or more. Such a solution may lead to frequent, widespread application of this special evidentiary action, which may lead to the loss of its significance and potency.

The notion and procedural nature of the undercover investigator derive from his position in the pre-investigation and criminal proceedings, and they are essentially marked by a series of elements of a specific sui generis procedural subject (Škulić, 2005, p. 666).

The formal condition for using an undercover investigator is a written, explained court order at the request of the prosecutor, and the content of the order itself is the same in the mentioned Balkan countries. The duration of the undercover mission is similarly determined, with differences in the initial determination and extension of the duration, while in Bosnia and Herzegovina this timeline is not precisely determined, but may last until the goal of the measure is met or the investigation is completed (Criminal Procedure Code of Bosnia and Herzegovina, 2003). Due to the peculiarities of this evidentiary action, it is desirable and justified to limit its duration, because otherwise various abuses may occur. It is indisputable that if the mission of an undercover investigator lasts longer, the probability of success of the measure is higher, and the possibility of gathering evidence and penetrating the very top of criminal organizations rises, but we should also keep in mind the protection of citizens' rights and freedoms.

Persons in charge of implementing this measure, in Bosnia and Herzegovina and Croatia it is prescribed that it is within the competence of the police, while in Serbia and Montenegro it is envisaged that in addition to a police officer a person in charge can be a member of another state body, agency, even a foreign national if the special circumstances of the case so

require. All criminal legislation of the mentioned countries contains the possibility of changing the official records in the databases of state bodies, as well as the possibility of issuing documents with changed data, all in order to protect the true identity of the undercover investigator. All current laws of the mentioned states of the former Yugoslavia explicitly prohibit incitement to commit a criminal offense by an undercover investigator, meaning that acting as an agent provocateur is forbidden. During the covert mission, the investigator collects various data and information, which can be used as evidence in criminal proceedings, and this primarily refers to audio and video recordings, photographs, documents, and more. Furthermore, all the legislations of the mentioned countries stipulate that the undercover investigator can be heard as a witness in criminal proceedings after his mission, and his statement has the force of evidence. Although the purpose of the mission of an undercover investigator is not in his testimony in court about what he discovered during his activities, in directing operational, tactical, and investigative actions in a specific case. However, there may still be a need to examine an undercover investigator as a witness (Delibašić, 2016, p. 86). The interrogation of the investigator refers to all the information he gained during the infiltration into the criminal environment, either by direct observation or through a conversation with the suspects. Only the Criminal Procedure Code of the Republic of Croatia restricts the possibility of testifying, regarding the conversations that the undercover investigator had during his engagement with the persons against whom this special evidentiary action was determined (Zakon o kaznenom postupku, 2011). In order to protect the true identity, a person who was on a secret mission is questioned under special conditions and circumstances, and this is present in all countries of ex-Yugoslavia. Of all these states, only the Serbian criminal legislation stipulates that a court verdict cannot be based solely and exclusively on the testimony of an undercover investigator, while that is the practice in the judiciary of other states.

Only the criminal legislation of Northern Macedonia and Montenegro further stipulates that an undercover investigator will not be criminally liable for aiding and abetting in criminal activities for which the measure was imposed if it was done in order to gather evidence and information for which the measure was imposed. In a way, this has a positive effect on the investigator, allowing him to act more freely and safely in a criminal environment (Code on Criminal Procedure of Montenegro, 2009).

In the Republic of Serbia, the issue of the responsibility of the undercover investigator for committing crimes during his mission has not been adequately regulated. There is only one provision in our Code of Criminal Procedure

regarding the criminal responsibility of an undercover investigator during his mission. An explicit legal provision prohibits an undercover investigator from inciting any criminal activity (Code on Criminal Procedure of the Republic of Serbia, 2011). He cannot act as an "agent provocateur", meaning that, if an undercover investigator verbally or by some other act created or strengthened the decision of a member of a criminal group to commit a crime, he would be exposed to criminal prosecution and punishment. Therefore, the only incitement to commit a crime is explicitly prohibited. Therefore, a logical question arises whether abetting, co-perpetration, and aiding are allowed. By prohibiting incitement, the legislator inevitably prohibits aiding and abetting, given that the instigator is liable just like he committed a crime. The situation is similar to aiding, which is also not allowed, although in this case, certain controversial situations may arise. Formally, an undercover investigator remains responsible because an explicit legal provision that excludes his responsibility does not exist.

Our Code of Criminal Procedure does not have explicit provisions for the commission of a criminal offense by an undercover investigator. With regard to this issue, two situations should be distinguished: 1) if the undercover investigator commits a criminal offense outside his engagement and 2) if the undercover investigator commits a criminal offense during the engagement, either by concealing his position and identity or does not prevent the commission of a criminal offense). Concerning the first situation, if the undercover investigator commits a criminal offense outside his/her engagement, the general rules for determining the responsibility and guilt of the undercover investigator apply. The second situation is extremely complex, and in that sense, the commission and provocation of criminal acts by undercover investigators in the countries of the continental legal system are prohibited. In Italy, an undercover investigator is not allowed to commit or provoke crimes, and to act in the role of "agent provocateur". In Germany, it is forbidden to commit criminal acts, but the investigator is released from responsibility for possible criminal acts he committed in case of extreme necessity in order to gain the trust of a criminal organization (Petrović, 2016, pp. 160–161).

In our theory, the view is expressed that the responsibility of the undercover investigator should be resolved only following the general rules relating to extreme urgency. Therefore, the crimes of an undercover investigator committed in the course of his work should be treated as acts committed in an emergency. This specifically means that an undercover investigator has not committed a crime if he has taken the appropriate action by which he

caused the consequences of the crime, in order to prevent a simultaneous clear danger that could not otherwise be eliminated, and the consequences are not greater than the consequences that were threatened. Also, if the undercover investigator causes danger in negligence, or exceeds the limits of extreme necessity, he is then considered a perpetrator of the crime, but can be punished less severely, and if the situation occurred under particularly mitigating circumstances, he can be released from punishment.

It is necessary to determine in which cases it is possible to give legitimacy to criminal offenses committed by the investigator, and which criminal offenses? These cases could be grouped into two groups, as follows:

1) commission of a criminal offense by an undercover investigator within a criminal group, in order to establish a false or prevent his true identity from being discovered and
2) committing a criminal offense in connection with an illegal activity investigated by an undercover investigator, in order to provide evidence of the guilt of certain persons (Marinković & Đurđević, 2007, p. 50).

5. Conclusion

Due to the specifics and complexity of organized crime, it is often impossible to uncover these acts and their perpetrators through the usual investigative techniques and actions that normally uncover more classic crimes, so the main purpose and justification of legal prescribing of special evidentiary procedure, including undercover investigator, is to solve and prove acts of organized crime

Since in our legal system the issue of the responsibility of the undercover investigator for the committed criminal offenses during his mission is not regulated completely, there are various interpretations and opinions regarding this issue. According to one view, an undercover investigator should not be held accountable for crimes committed during his deployment. Since the nature of his task is such that he inevitably gets into a situation where he has to commit crimes in order to succeed in the mission. Infiltration into criminal environments is possible only if he commits crimes like all other members of the group. Other views take the stance that an undercover investigator is strictly prohibited from committing criminal offenses, or in other words, he is criminally liable for the committed criminal offenses. This is the case with our legislation, and accordingly, it is not disputed that an undercover investigator may not, in general, commit criminal offenses during his activities, but it is

necessary to provide certain exceptions to this rule. Thus, according to the third, compromise solution, the undercover investigator would not be liable under certain conditions for criminal acts during his activities.

It is important to point out that regardless of the still insufficiently precise definition of the institution of the undercover investigator, as well as the existence of certain legal ambiguities on certain issues, it can be said with certainty that the institute of the undercover investigator is of great importance as an evidentiary action and investigative method within the state's response to organized crime. Because, as already pointed out, the complexity and specificity of organized crime require the existence of complex and special methods for preventing, solving, and punishing its members, because the very occurrence of organized crime is specific, and one of the specific evidentiary methods is certainly using a covert investigator.

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PRIKRIVENI ISLEDNIK U POJEDINIM DRŽAVAMA EVROPSKOKONTINENTALNOG PRAVNOG SISTEMA

REZIME: Razrađeni mehanizmi kriminalnog delovanja, visok stepen tajnosti, hijararhijska struktura i podela zadataka članova organizovane kriminalne grupe, čine je kompleksnom pojavom. Zbog svoje specifičnosti, otkrivanje krivičnih dela i učinioca organizovanog kriminaliteta, zahteva primenu posebnih metoda i tehnika. Jedna od njih jeste posebna dokazna radnja, angažovanje prikrivenog islednika, kojom se pribavljaju dokazi i informacija koje su neophodne za otkrivanje krivičnih dela kao i same organizovane kriminalne grupe. Cilj ovog rada jeste prikazivanje specifičnosti ove posebne dokazne radnje u pojedinim državama evropskokontinentalnog pravnog sistema, gde se odgovara na pitanja,

kada, na kojin način i pod kojim uslovima određeno lice može istupiti u svojstvu prikrivenog islednika. Metode koje su korišćene u ovom radu su normativni metod, uporedni metod, istorijski metod i metod analize sadržaja.

Ključne reči: *posebne dokazne radnje, prikriveni islednik, organizovani kriminalitet, policijski službenik.*

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A review
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A REVIEW: ALEKSANDAR MATKOVIĆ, OCCULTISM, CRIME AND LAW, NOVI SAD: NOVI SAD HUMANITARIAN CENTRE AND FACULTY OF EUROPEAN LEGAL AND POLITICAL STUDIES, 2021 (549 PAGES)

PRIKAZ KNJIGE: ALEKSANDAR MATKOVIĆ, OKULTIZAM, KRIMINALITET I PRAVO, NOVI SAD: NOVOSADSKI HUMANITARNI CENTAR I FAKULTET ZA EVROPSKE PRAVNO-POLITIČKE STUDIJE, 2021. (549 STR.)

Some of us are completely determined only by the zenith of our scientific research work, while those that are already clearly marked by their first works are the rare ones. Aleksandar Matković bravely set out for this second path, completely alone, embarking on, to say the least, a challenging path of researching the complex multidimensional and heterogeneous phenomenon of crime associated with occult ritual activities. This young and promising author has been building his academic career at the Faculty of European Legal

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and Political Studies in Novi Sad for years, first as an assistant professor and then as an associate professor. He also serves as vice dean for science and Head of the Department of Criminal Law. The Monograph before us, based partly on a doctoral dissertation, is the result of many years of interest and thorough decade-long research work, in order to unravel and understand the complex phenomenon of "occult crime", understood as a phenomenon where a lot is speculated on, and known almost nothing, as the author states.

With a skillful, integral, and comprehensive presentation, the author of the Monograph offered excellent legal and criminological scientific material that our region lacks. In addition, the results of a systematically conducted study should help legal practice, but also experts from many other scientific fields which are also related to this specific type of crime. Additionally, if we take into account that the general public is very interested in the occult and pseudo-occult content, often marked by numerous prejudices and unfounded allegations, it is clear that we have a work here that will help many people to more objectively and comprehensively understand the essential nature of crime related to occult ritual activities and the relationship between occultism – crime – law.

Structurally, the Monograph before us is divided into four thematic units which could with their scope, content and significance represent separate individual studies,as the author states. The first part, *Occultism, Crime and Law – Mutual Relations and Perspectives*, consists of three categories. The first category–*Occultism and the legal order*considered the issue of using the term "occultism," with reference to the general issues of modern occultism and its connection with the law. Regarding this, the author considered the manner in which the issues of religious affiliation of individuals and guaranteed religious freedom are generally regulated within the legal order. The second category of the first chapter, entitled *Crimes with occult-ritual elements*, addresses the issue of research of this type of crime and the justification of separating specific "occult crime" as a separate category of crime. Here, in addition to assessing the existing definitions present in the literature, the author offered a new, expanded definition of crime with an occult element, taking into account the need for a multidisciplinary study of this phenomenon. Within the third category of the first chapter entitled *Occultism and Moral Panic*, the author dealt with this phenomenon in detail, given that unfounded allegations lead to many crimes without valid argumentation and objective facts are being linked to occultism. Overemphasizing existing elements of the occultin a certain crime and their inadequate interpretation happens frequently. As the author notes, the level of knowledge and awareness, personal attitudes that are often

shaped by the strong influence of different social circumstances, frequent presence of prejudice are just some of the reasons that relativize the possibility of a unified criterion for determining crimes within the occult domain. In order to make the theoretical consideration of the relationship between occultism and moral panic more understandable, the author gives an overview of several cases concerning proven unfounded allegations of "satanic ritual abuse" of children.These include: 1) the publication of *Michelle Remembers* book and accompanying controversies, 2) Cases of alleged sexual abuse of children in Kern County, California, and 3) Charges of sexual abuse of children at McMartin Preschool in Manhattan Beach, California. Since satanic moral panic has strongly influenced various aspects of popular culture, the author pays special attention to satanic content in literature and comics, as well as the presence of occult content in film, animated film, video games, role-playing games and toys. A prominent place within the third category of the first chapter have the analyzes of the relationship between music and satanic moral panic, i.e. issues of occult aesthetics in popular music, subliminal messages in music, as well as activities of the PMRC (*Parents Music Resource Center*) to strengthen the influence of parental control over children's access to music of inadequate content. The author's focus was also on some cases of adolescent suicide which had a court epilogue, and were characterized by the general public as a result of the harmful influence of popular, especially heavy metal music on young people. Furthermore, the author deals with the phenomenon of satanic moral panic in Serbia, which, although it has many points of contact with global trends, also hides significant local specifics. The most characteristic example of this phenomenon in our region is the myth of the existence of extremely destructive activities of the satanic organization *Black Rose*, whose activities are attributed to numerous crimes based on local and unfounded allegations.

The second chapter, entitled *Legal Regulation*, is intended to review and analyze current international legal acts relating to the activities of sects and cults, as well as national legal sources that generally regulate the issue of religious freedom and rights and the activities of religious communities, given that there are still no specialized regulations related to occult activities in our state and in most European countries. Through a comparative legal review, the author first interprets the regulations of certain American federal states, as anti-cult regulations first appeared there, with an emphasis on Idaho, California and Illinois. As a key general objection in the analysis of the regulations of the mentioned countries, in addition to a number of shortcomings in terms of legal, technical and content nature, the author emphasizes the fact of their creation

and adoption under the strong influence of anti-cult propaganda and spreading satanic moral panic as a social phenomenon. Regarding the regulation of the "destructive religious communities" issue in Europe, he sees a difference between countries that do not have specialized legislation dedicated to this area and countries with "anti-sect" legislation or with bodies in charge of monitoring the situation in this area established at the national level. Thus, the author analyzed the regulation of France, the European state that took the most radical measures to suppress the activities of certain minority religious communities. In addition, the author gives a review of the legal order of Luxembourg, where in 2013 two new laws were adopted, the texts of which do not contain the explicit term "sects" (religious and other). Austria, Belgium, Germany and Switzerland are taken as examples of countries in Europe where there is a system of organized activities at the state level in order to prevent the harmful effects of religious sects and cults.

The third chapter – *Cases from judicial and criminal practice*analyzes numerous interesting examples. According to the author, care was taken to establish an optimal balance between different crimes related to occult or pseudo-occult content, as well as between different forms of the same type of crime, all toinvestigate the characteristics of these crimes. Thus, the first part of this chapter deals with some cases of crimes and self-destructive acts in our country,including crimes against life, body and sexual freedom, crimes of ritual killing and abuse of animals, crimes against religious monuments, religious buildings and other related movable and immovable property, crimes of destruction and damage to graves and endangering the peace of the deceased, as well as certain specific criminal offenses that do not fall into the aforementioned categories. The second part, divided into several units according to the territorial principle, contains numerous examples from foreign practice.It includes a review of the world's most famous and the most serious incidents, which included illegal or self-destructive behavior associated with minority religious communities such as the *Peoples Temple*, the *Branch Davidians*, the *Order of the Solar Temple*, *Aum Shinrikyo*, the *Heaven's Gate*, the *Movement for the Restoration of the Ten Commandments of God*and the *Divine Light Mission*.As far as Europe is concerned, numerous examples of the most serious crimes against life and body have been processed, with the analysis of cases from a total of twenty-six European countries (not counting the Republic of Serbia). With regard to North America, among the large number of "satanic" crimes in the United States, the author pointed out primarilyto those that are considered to have had the greatest impact on the initial formation and spread of satanic moral panic. Latin America and the

islands of the Central American region, due to their colonial history, have significant features in the field of religious-magical doctrines and rituals, and are also areas of Santeria, Brujeria, Palo, Voodoo, cult of the Holy Death, and local religious-magical systems based on traditional pre-Hispanic culture. In this regard, the author points to some various illegal acts that include the theft of mortal remains, animal sacrifices, mutilation of people, as well as the performance of ritual murders. The author also focused on particularly serious crimes registered in Asia, as he analyzed various examples that have been recorded in different Asian countries in very diverse religious and cultural environments present in this continent, which, as the author shows, directly affects the type of occult content, as well as the characteristics of crimes related to them. When it comes to the African continent, the author divides the analyzed cases of crimes with occult ritual elements and local specifics into two categories. The first consists of cases of ritual killing and ritual mutilation, related to traditional local magical rites and customs of the people of Africa, while the other examples are related to modern occultism. Similarly, from Australia and Oceania, the author singled out some cases of crimes related to traditional folk magic rites on the one hand, and some examples with elements of modern occultism, on the other.

The last, fourth chapter of the Monograph, entitled *Criminal Law, Criminological and Criminalistic Aspects,* is divided into five narrower thematic units. The first gives a division of criminal acts related to occult ritual activities according to several criteria. Thus, the author, relying on the results of the conducted research, offered his proposed classification as a supplement to the already existing typologies, and in the desire to shed light on certain specific aspects of different types of crime. In that sense, he formed three basic models of division. These are: 1) Crimes with occult-ritual features and crimes with pseudo-occult elements; 2) Crimes related to traditional folk occultism and crimes with features of modern occultism; 3) Division according to the type of object of protection (which includes criminal offenses against life, physical, sexual integrity, freedoms and rights of citizens, criminal offenses against property, criminal offenses against public order and peace, criminal offenses against public safety, criminal offenses against health and criminal offenses against animals). The second part considers the issues of sanity, age of perpetrators, as well as certain components of their voluntary action. Within the third part, the author reviews the objective circumstances in the commission of crimes related to occult activities, i.e. the perspective of complicity in the commission of certain types of crimes, the issue of criminal association, then the issue of the passive subject and

object of the act of execution, among other issues. The latter is reviewed in several thematic areas adapted to the different types of crimes and objects of protection covered by them. Also, the author separately analyzed the topic of typical occult-ritual acts, the use of occult symbols and other relevant circumstances in the commission of a crime. The fourth part of the fourth chapter contains an analysis of the spatial and temporal manifestation of the phenomenon of occult-related crime. In the last, fifth part, the author focuses on the specific issue of relationships between crimes with elements of occult and certain subcultures and countercultures, such as music, the subculture of fans of movies with occult content, and "gaming" subculture.

From the presented structure of the Monograph, it can be stated that the research field of study is very wide. Its backbone consists of criminal law and criminological aspects of the phenomenon of crime associated with occult ritual activities. However, this starting point is significantly supplemented by considerations from other legal branches, as well as research in the field of sociology, social psychology and pathology, criminology, security science and knowledge from other, very heterogeneous spheres, which certainly cannot belong to the author's narrow academic orientation. Aware of the many risks that come with processing very complex matter in an integral way, in places where he resorted to a more general approach in processing certain issues, the author always referred to specialized papers and studies. This significantly paved the way for further research endeavors in the field of occult and pseudo-occult.

Having certainly overcome numerous difficulties in conceiving the work itself, based on an extensive multidisciplinary research study, the young but extremely erudite author can be completely satisfied with the way he presented the complex issue of crime with occult elements, primarily from a legal perspective, but also its connection with various social fields. Thus, in the era of specialization in all fields, fragmentation of science and strengthening of various divisions, the fast pace of life, and frequent absence of extensive and comprehensive studies, one created a work that bravely opposes all modern tendencies and challenges. It will certainly affect the improvement of practical action of state bodies when faced with problems such as crime with elements of the occult. In addition, it will become a place where one can find the answers to many often controversial questions, from the domain of occult and pseudo-occult, but also a lobby from which many researchers from different social fields will start focusing on further studies.

THE INSTRUCTION TO THE AUTHORS
FOR WRITING AND PREPARING MANUSCRIPTS

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

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

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

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

General information about writing the manuscript:

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

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

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

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

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

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

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

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

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

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

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.