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C O N T E N T S

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ADVANTAGES AND CHALLENGES OF DUAL EDUCATION IN THE DEVELOPMENT OF THE PROFESSIONAL IDENTITY OF ENGINEERS

ABSTRACT: The authors consider the strategic directions of the development of higher education in Republic of Serbia, especially in the light of legislative news regulating dual education at higher education institutions. In this context, they have paid a special attention to the analysis of legal acts and by-laws important for the development of the professional identity of engineers educated under the dual model of education. They have also perceived the number and structure of accredited study programs at higher education institutions in our country, which represent significant indicators of the direction of the development of the domestic economy mapped through the interest of employers for the engineers educated according to the dual model. So, we can conclude that there is an obvious influence of the fourth industrial revolution and the information age on all aspects of the society. Starting from all those changes that are happening and will happen, the Government of Republic of Serbia adopted the Education Strategy for the period from 2021 to 2030, in which there are

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given the vision, goals, and principles of education in the future. Talking about the dual model of higher education, the most important act is the Law on the Dual Model of Studies in Higher Education being in the focus of the authors in this research.

Keywords: *Higher education, dual education, The Education Development Strategy of Republic of Serbia, legislation, engineer.*

1. Introduction

Quality education is the motor of Serbia's development, while scientific and technological results and innovations based on the responsible and creative engagement of educated personnel are precisely cause-and-effect connected with educational processes, and that is why the valid Strategy for the Development of Science and Technology has the motto The power of Knowledge (Strategy of Science and Technology development of the Republic of Serbia for the period from 2021 to 2025 »The power of knowledge«, 2021). The belief that the expected return effect of education will lead to an economic boom has been fulfilled in some countries that have managed to integrate science, education, and development. The priority given to education and science in the countries of Western Europe (primarily in Germany), Japan, and the USA is closely related to their embarking on the path of rapid economic and economic expansion and development (Dukić Mijatović, 2022, p. 7). Now, after the development progress in the Republic of Serbia, it becomes necessary to determine the current state of education, and project development, and to have an active attitude toward the development and education of future generations in a much more interconnected world. All of this leads back (or leads) to issues of achieved and future quality of education and development, especially for young people. Reflections on the various possibilities of the education role in young people's development can be found in the fact that it is indisputable that education (knowledge) and science are the consequence and condition of the development of society, and that they are most closely connected with it. Only a qualitative analysis shows how much education and scientific achievements contribute to the development of society. Education in the 21st century is not only one of the many instruments of development but also one of its constituent parts and essential goals (Čukanović Karavidić, Dukić Mijatović, Pejanović & Karavidić, 2021, p. 75). Drafting of the current Education Development Strategy of Serbia (SROS) was initiated by the Ministry of Education, Science and Technological Development of the

Republic of Serbia (MPNTR), as the competent proponent under Article 29, paragraph 1 of the Law on the Planning System of the Republic of Serbia. The strategy for education development in Serbia, for the period from 2012 to 2020, was of great importance. This strategy laid the foundations for the development of pre-university and university education in the 21st century and contributed to the increase in the quality and efficiency of education as a whole. In addition, the Strategy enabled the creation of conditions for the personal and professional development of each individual and the development of society based on knowledge. The reasons for starting the initiative to create the current Education Development Strategy in the Republic of Serbia were numerous, one of which is certainly that it included the harmonization of policies in education with scientific, technical, and technological development and contemporary trends in society and the economy, and that it included issues of harmonizing regulations in education with international documents of the UN, EU, Council of Europe (Dukić Mijatović, 2021, p. 15).

Law on Amendments to the Law on Higher Education, brought by the dynamic legislative activity in 2021, enabled the return to full membership of the European Association for Quality Assurance in Higher Education (ENQA). Furthermore, the Law on Student Organization was adopted, which regulates this field after a long period, as well as the Rulebook on Amendments to the Rulebook on Standards and Procedures for the Accreditation of Study Programs as a by-law that enables the implementation of the Law on the Dual Model of Studies in Higher Education.

2. Challenges of higher education development in the Republic of Serbia

In the previous period, several key activities were carried out to improve the evaluation of the quality of doctoral studies – each doctoral dissertation became publicly available in an online repository. The share of highly educated people engaged in research and innovation in higher education institutions (HEIs), institutes, and companies has increased. Ensuring and strengthening the availability of all three study levels to students from vulnerable groups, as well as the share of highly educated people engaged in research and innovation in higher education institutions (HEIs), institutes, and companies. Despite the negative demographic trends in the RS, an increase in higher education was observed from 48% in 2015 to 54.7% in 2019. Moreover, a continuous increase in the percentage of the population with higher education was observed – from 18.7% in 2015 to 20.4% in 2019 (EUROSTAT). Achieving an equal system

of higher education, with fair and equal access for all groups in society, is one of the priorities in all countries participating in the Bologna process. In Serbia, it is still noticeable that certain social groups are underrepresented in higher education. Reports on the social dimension in the implementation of the Bologna Process in Serbia (EQUIED Tempus Project) show reduced participation of young people from the poorest families, from families with the lowest level of education, from Roma families nationalities, and persons with disabilities. We can conclude that, although the necessary conditions for the realization of the principle of »equal access for all« have been created in higher education in Serbia, that process is not complete and requires the definition of additional regulations and other measures (Dukić Mijatović, 2021, p. 16). The entire system of higher education, as well as the HEIs themselves, should undergo a transformation process towards a modern and socially responsible university, which is based on the application of academic principles and values in the realization of their basic functions (education and research). In the framework of higher education, it is necessary to ensure the transfer of technologies and innovations, continuous learning, and engagement in solving social challenges of the local and/or wider community. It is necessary to direct the Higher Education Institution in the direction of the Third Mission in the development of the university, where the issue of social responsibility of the university occupies a special place, which obliges the university to be actively involved in the social, economic, economic, political and cultural development of society. Thus, to increase the success and quality of education at all levels (from VVO to higher education) and to develop key competencies in the 21st century, it is particularly important to harmonize monitoring systems and the assessment of appropriate indicators, because the education system must not be viewed in a fragmented way (Education and Education Development Strategy in the Republic of Serbia until 2030, 2021).

The vision of education aims to provide quality education for all children and young people in the Republic of Serbia to ensure their full potential. The mission of education aims to provide a quality education that should contribute to the development of society as a whole. The vision of the development of education must ensure general progress in the development of society and economy based on knowledge while respecting the principle of solidarity and respecting and strengthening an inclusive approach in education that enables quality education for all and an economy that will be competitive on the European and world economic market. The vision of the development of education and the entire SROS 2030 should ensure changes in different areas of education as well as at different levels, and the most important of them are

listed below. One of the important goals in the field of education that emerges from the »UN Agenda Sustainable Development Goals by 2030«, to which RS is a signatory, is that every young person should master the basic levels of reading and math literacy, which requires a commitment to achieving these goals. The education development strategy until 2030 has two general goals, the first of which is dedicated to preuniversity education and the second to higher education. At the same time, General Goal 1 implies an increased quality of teaching and learning and the availability of pre-university education, and General Goal 2 implies an increase in the quality of higher education while improving its relevance and fairness.

The fulfillment of this goal implies an increase in the number of students who received support based on the new Rulebook on financial support for students. Additionally, it implies an increase in the number of scholarship students, the increase in the number of highly educated students who participate in short cycles at the Higher Education Institution, and an increase in the number of persons with a completed four-year education who participate in short cycles at the Higher Education Institution. The introduction of digital platforms, electronic index, and electronic register of students are also significant; the development of the register of competencies and the register of qualifications (Dukić Mijatović, 2021, p. 18). The Law on Amendments to the Law on Higher Education traced Serbia's path toward full membership in ENQA (NAT, 2022). For this reason, the current legal provisions regulate the procedures for the election of members of the Board of Directors of the National Accreditation Body, directors, members, and presidents of KAPK, then the National Council for Higher Education, and the Appeals Commission at NAT, considering that the appeals procedure for accreditations both higher education institutions and study programs were moved from NSVO to NAT.

Important provisions of the Law are also the provisions of Article 100, which govern the introduction of the state matriculation exam, which will begin in 2023/2024. The higher education institution, by its general act, determines which general, professional, and artistic matriculation exams are evaluated when enrolling in studies. For more, it determines the criteria based on which the classification and selection of candidates for enrollment in studies are carried out and compiles a ranking list of registered candidates for enrollment in first-degree studies based on the general success achieved in the four-year secondary education and on the matriculation exams, the results of the examination for checking special knowledge, aptitudes, and abilities and, if necessary, based on the success in national and international competitions, following the general act of the higher education institution.

3. Strategic aspects of the development of dual academic and vocational education in the Republic of Serbia

In the period covered by the previous Education Strategy, significant results and progress were achieved in various areas. At the level of vocational studies, significant results were achieved through the introduction of research into vocational studies, the reform of the organizational structure of vocational education institutions, the improvement of expected study outcomes, the improvement of the competencies of teaching staff in vocational studies, the strengthening of cooperation between higher education and the economy, and other measures. With the adoption of both the lex specialis and by-laws, a step forward was made. It should be borne in mind that technical-technological transformation implies a new way of organizing production processes, the result of which are smart products, services, and solutions. New technologies bring the potential for manufacturers to be significantly more efficient and productive, as well as less wasteful. This imposes an obligation for companies to undergo some form of business transformation. New business models are emerging, and learning and organization happen »on the fly«. The labor market is also adapting to new conditions. Namely, new skills and competencies are needed. The necessary managerial and IT skills and competencies are constantly changing, which is why appropriate education is also necessary. The fourth industrial revolution introduces deep and systemic changes in the economy and society. Namely, there should be: expansion of digital technologies (new computer technologies, blockchain, and distribution technologies, internet of connected things, supercomputers, cyber risks, etc.); reforming the physical world (artificial intelligence and robotics, advanced materials, multidimensional printing, drones, etc.); changes in the human being (biotechnologies, neurotechnologies, virtual augmented reality, changes in art and culture, etc.); integration of the natural environment (use of renewable energy sources, its storage, and transmission, geoengineering, space technologies, etc.). In Serbia, significant efforts are being made to create conditions for the changes required by digitalization (Strategy of Scientific and Technological Development of the Republic of Serbia for the period from 2021 to 2025 »The Power of Knowledge«, 2021, p. 75). In this goal, the following was adopted: a Law on innovation activity in 2021, a Strategy for scientific and technological development of the Republic of Serbia for the period from 2021 to 2025 »The power of knowledge«, and an Action plan for the period 2021-2023 for the »The power of Knowledge«, Strategy for the Development of the Startup Ecosystem of the Republic of Serbia from

2021 to 2025, Action Plan for the period until December 31, 2022, for the implementation of the Strategy for the Development of the Startup Ecosystem of the Republic of Serbia from 2021 to 2025 and Recommendations on the Ethics of Artificial Intelligence was adopted on the panel within the 41st General Conference of UNESCO, in November 2021, as well as the Artificial Intelligence Development Strategy adopted in 2019 for the period 2020-2025. The power of knowledge leads to the improvement of science, as well as that the development of science creates the future, and the development of science and higher education are inseparable, especially in the segment of new technologies and dual academic and vocational education. From the 2021/2022 school year for the first time, dual study programs were implemented at higher education institutions in the Republic of Serbia (29 accredited, while dual education is realized in 150 secondary vocational schools, for a total of 54 dual educational profiles with qualification standards). Over 10,000 students and 880 companies are involved in the dual education system. It is precisely the enactment of lex specialis in this area and by-laws that connects education and the economy in the best way. The goals of the dual model are: providing conditions for the acquisition, improvement, and development of students' competencies following the needs of the labor market; contributing to strengthening the competitiveness of the economy of the Republic of Serbia; providing conditions for easier employment after completing higher education; providing conditions for further education and lifelong learning; developing entrepreneurship, innovation and creativity of each individual for his professional and career development; providing conditions for personal, economic and general social development; developing the ability for teamwork and a sense of personal responsibility in work; developing awareness of the importance of health and safety, including occupational safety and health; developing the ability to self-evaluate and express one's own opinion as well as independent decision-making and promoting the socially responsible role of the employer in society.

The law stipulates that a higher education institution that wants to realize study programs according to the dual study model forms a network of employers who need to employ persons with qualifications acquired at that institution. The basis for the implementation of the dual study model is a study program accredited under accreditation standards and a qualification standard established by the law regulating the national framework of qualifications. The dual study model can be accredited as an independent study program or as one of the modules within the study program and in addition to the elements prescribed by the law governing higher education and accreditation standards,

it contains a description and scope of learning through work expressed in hours and ESPB points. The ratio of hours of active teaching conducted at the higher education institution to learning through work at the employer is determined by the study program, with the fact that active teaching (lectures, exercises, and other active teaching forms) must be represented by at least 450 hours per year on average at the level of the whole study program, and learning through work with at least 450 hours per year on average at the level of the entire study program. The mutual relationship between the higher education institution, the employer, and the student in the study programs, i.e. modules according to the dual model, is governed by a contract. The mutual relationship between the higher education institution and the employer is governed by the contract on the dual model, while the mutual relationship between the employer and the student is governed by the contract on learning through work. The contract on the dual model is concluded between the higher education institution and the employer, in written form, for a term that cannot be shorter than the number of years of study program duration. The employer's mentor must posseess the competencies for learning through work implementation defined by the general act of the higher education institution. A student who is learning through work is entitled to compensation. Compensation for learning through work is paid once a month, no later than the end of the current month for the previous month, for each hour spent on learning through work in the net amount of at least 50% of the basic salary of an employee who works in the same or similar jobs, by the law. Therefore, dual education represents an extraordinary platform for connecting the educational and economic process, where the higher education institution will have benefits in the form of the development of a study program based on the latest technologies, the company will employ personnel fully prepared, qualified and competent to respond to the challenges of modern production processes and the most advanced technologies, while students, except for certain employment, due to the competencies they acquired during the educational process and were paid during the same. All of the above greatly contributes to the development of the professional identity of an engineer.

Based on the conducted empirical research on the availability of data on the so far accredited study programs conducted by the National Accreditation Body, i.e. the Commission for Accreditation and Quality Control, the following accredited programs according to the dual study model within higher education were recorded in the period from September 23, 2021, to October 10, 2022. Within this period, 30 decisions were made on the accreditation of study programs under the dual model. Analysis of collected data in a

given domain indicates certain trends. First, when it comes to the number of accredited programs, and taking into account the beginning of the legal basis for the accreditation of study programs according to the dual model in higher education, the number of 30 accredited programs is significant (National body for accreditation and quality assurance in higher education, 2022). It is a relatively short time cycle in which accreditations are submitted and programs are accredited. If such a trend in the number of programs continues to be constant in the coming period, we can talk about a relatively significant number of programs that will be offered within higher education. Other observed indicators related to the list of accredited programs are related to the type of study, that is, the degree of study. In this regard, a significantly larger number of study programs are accredited within professional studies, that is, only three programs are accredited as study programs of academic studies. This data is to a significant extent determined by the fact that the creation and implementation of study programs according to the dual model is significantly easier in the context of the implementation of the program itself in the field of professional studies as opposed to academic studies. Finally, when it comes to the degree of study in the context of accredited study programs, the programs are primarily accredited at the first degree of study, with a few programs at the second degree. This data indicates that the focus of higher education institutions in the domain of accreditation of study programs according to the dual model is primarily focused on basic studies since at this level of study, titles that are of greatest need for the labor market are concentrated. Analyzing the names of accredited study programs, and higher education institutions that created such programs and started their implementation, a significant number of programs are in the field of technical and technological sciences. Taking into account the character and goal of studies according to the dual model, it is expected that the creation of given study programs is predetermined in synergy with the acquisition of knowledge and skills specific to certain scientific fields. The trend of development of information and communication technologies, and general technological progress imposes the needs of the labor market in a given domain, in which higher education institutions must respond to such needs through the creation of new programs. At the moment, the trend is such that there is a high degree of need for qualified labor in a given area. Thus, the role of higher education institutions is to offer competent experts and future labor for the needs of the labor market through the creation and accreditation of their programs according to the dual model, which is also one of the goals of introducing a dual study model in the field of higher education.

Table 1. Accredited programs according to the dual study model in higher education

Number	Name of the institution	Name of the program	Type and degree of study
1.	The Academy of Applied Technical Studies, Belgrade	UPS – Energy Efficiency and Clean Energy	Undergraduate professional studies
2.	University of Novi Sad – Faculty of Agriculture	UAS – Landscape architecture	Undergraduate academic studies
3.	University of Kragujevac – Faculty of Technical Sciences, Čačak	UPS – Apparel Engineering and Design	Undergraduate professional studies
4.	The Academy of Applied Technical Studies, Belgrade (Department of Traffic, Mechanical Engineering and Protection Engineering)	UPS – Road traffic	Undergraduate professional studies
5.	The Academy of Applied Technical Studies, Belgrade (Department of Belgrade Polytechnic)	UPS – Recycling technologies	Undergraduate professional studies
6.	The Academy of Applied Technical Studies, Belgrade	MPS – Phytomedicine	Master professional studies
7.	The Academy of Applied Technical Studies, Belgrade	MPS – Food technology	Master professional studies
8.	The Academy of Applied Technical Studies, Belgrade	UPS – Mechanical Engineering	Undergraduate professional studies
9.	The Academy of Applied Technical Studies, Belgrade	MPS – Mechanical Engineering	Master professional studies
10.	College of Applied Technical Sciences, Niš (Department Niš)	UPS – Construction Engineering	Undergraduate professional studies
11.	The Academy of Applied Technical Studies, Belgrade/ Department of Belgrade Polytechnic	UPS – Fashion design of leather products	Undergraduate professional studies

Number	Name of the institution	Name of the program	Type and degree of study
12.	The Academy of Applied Technical Studies, Belgrade/ Department of Belgrade Polytechnic	MPS – Graphic Design	Master professional studies
13.	College of Applied Technical Sciences, Niš / Department Pirot	UPS – Business Information Systems	Undergraduate professional studies
14.	College of Applied Technical Sciences, Niš / Department Niš	UPS – Food technology	Undergraduate professional studies
15.	College of Applied Technical Sciences, Niš / Department Niš	UPS – Industrial Engineering	Undergraduate professional studies
16.	College of Applied Technical Sciences, Niš / Department Niš	UPS – Furniture and Interior Engineering	Undergraduate professional studies
17.	The Academy of Applied Technical Studies, Belgrade (Odsek Primenjene inženjerske nauke, Požarevac)	MPS – Electrical Engineering and Computing Master	Master professional studies
18.	The Academy of Applied Technical Studies, Belgrade	UPS – Graphic engineering	Undergraduate professional studies
19.	Akademija strukovnih studija Južna Srbija – Odsek za poslovne studije, Leskovac	UPS – Management of Food and Gastronomy Technology	Undergraduate professional studies
20.	University of Niš – Faculty of Mechanical Engineering, Niš	MAS – Mechanical constructions, development and engineering	Master professional studies
21.	Academy of Applied Studies Šumadija – Department Kragujevac	UPS – Business Engineering – Mechanical Engineering	Undergraduate professional studies
22.	The Academy of Applied Technical Studies, Belgrade	UPS – Interior Design	Undergraduate professional studies

Number	Name of the institution	Name of the program	Type and degree of study
23.	Academy of Technical and Art Applied Studies Belgrade (Department of the High School for Information and Communication Technologies Belgrade)	UPS – Postal and Logistics Systems	Undergraduate professional studies
24.	Academy of Vocational Studies Southern Serbia Leskovac, (Department for Agricultural and Food Studies Prokuplje)	UPS – Food technology	Undergraduate professional studies
25.	Academy of Vocational Studies Southern Serbia	UPS – Textile Engineering	Undergraduate professional studies
26.	University of Kragujevac – Faculty of Technical Sciences, Čačak	MAS – Information technology	Master professional studies
27.	Academy of Vocational Studies Southern Serbia, Department of Business Studies Blace	UPS – Tourism	Undergraduate professional studies
28.	Academy of Applied Studies Belgrade	UPS – Vocational Medical Laboratory Technologist	Undergraduate professional studies
29.	Academy of Applied Studies Belgrade	UPS – Vocational beautician esthetician	Undergraduate professional studies
30.	College of Applied Technical Sciences, Niš / Department Vranje	UPS – Environmental Protection	Undergraduate professional studies

Source: Author`s research

4. Conclusion

The strategic commitment of the RS Government and MPNTR is to provide quality education for all citizens through openness, fairness, accessibility, and democracy of education, with a commitment to providing equal opportunities for all children. The mentioned and other changes that are happening and will happen in the economy and society lead to the conclusion that quality education is needed that will follow modern changes in society. Namely, we are talking about a society based on knowledge, which is based on the knowledge economy. The knowledge economy has an economy based on knowledge, that is, an economy that dominantly builds its competitiveness on technological strength and highly educated human resources. Following Europe, Serbia has declared itself as a society based on knowledge, which obliges us to take care of the quality of education. The strategy for the development of education in Serbia until 2020 (SROS 2020) produced significant results in the field of pre-university and university education and contributed to the creation of conditions for the personal and professional development of each individual, as well as the development of society and the state as a whole. Furthermore, when it comes to higher education, the valid Education Strategy should contribute to the improvement of the quality of education outcomes and the quality of human resources, then to the improvement of the relevance of higher education at the national and international levels. Additionally, it is expected to improve the coverage and fairness of higher education and the definitive digitization of higher education. Higher education should, directly and indirectly, serve the purpose of realizing the concept of sustainable development. It is a concept based on knowledge and innovation, ecological sustainability, development of culture, and technology, and nurturing diversity and critical thinking. However, how much an educated individual will contribute to the growth of the social groups product with his increased accumulated knowledge and expertise depends, first of all, on the possibility of employment. Those instruments and measures that encourage the mobility of human resources, to apply the acquired knowledge in practice, are significant, and current legislative changes can be affirmatively assessed in that direction. Adequate choice of an occupation in conditions of rapid structural changes is a complex process. If long-term determinants are not taken into account in the correct choice of occupation, saturation or shortages occur in the labor market, and one cannot speak of the adequate formation of human capital, but of social cost, i.e. about the inadequate allocation of resources in certain segments of education. Education (knowledge) is the most important driver of development, long-term investment in progress, and a flywheel of

social development, while dual academic and professional education is a significant step forward in improving the development of the professional identity of engineers. The initiated process of accreditation of study programs based on new legislative solutions is moving in the direction of achieving society's goals. The model of dual education in higher education represents the possibility of creating study programs with the inclusion of the economy for better profiled future human resources for the needs of the labor market. The importance of higher education institutions in the field of creating study programs and competencies of graduates is of crucial importance for the future sustainable development of the economy and society in general. Empirical data have shown that institutions in the field of higher education have recognized that the new model of education can contribute to the transfer of knowledge and skills to future students, creating new competencies in the function of the needs of the labor market. The full effects of the new study model are expected in the medium term, taking into account the trend of creating new programs according to the given model and the time required to complete these studies.

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PREDNOSTI I IZAZOVI DUALNOG OBRAZOVANJA U RAZVOJU PROFESIONALNOG IDENTITETA INŽENJERA

REZIME: Autori razmatraju strateške pravce razvoja visokog obrazovanja u Republici Srbiji posebno u svetlu legislativnih novina, kojima je regulisano dualno obrazovanje na visokoškolskim ustanovama. U tom pravcu posebnu pažnju su posvetili analizi zakonskih i podzakonskih akata značajnih za razvoj profesionalnog identiteta inženjera školovanih po dualnom

modelu obrazovanja, te sagledali broj i strukturu akreditovanih studijskih programa na visokoškolskim ustanovama kod nas, koji predstavljaju značajne pokazatelje pravca razvoja domaće ekonomije mapirane kroz interes poslodavaca za inženjerima obrazovanim po dualnom modelu, te je očigledan uticaj četvrte industrijske revolucije i informatičkog doba, na sve aspekte društva. Polazeći od svih tih promena koje se dešavaju i koje će se dešavati Vlada Republike Srbije je usvojila Strategiju obrazovanja 2021-2030. godine, u kojoj su dati vizija, ciljevi i principi obrazovanja u budućnosti, dok je za dualni model visokog obrazovanja najznačajniji akt Zakon o dualnom modelu studija u visokom obrazovanju, koji je u fokusu autora u ovom istraživanju.

Ključne reči: *Visoko obrazovanje, dualno obrazovanje, Strategija razvoja obrazovanja Republike Srbije, legislativa, inženjer.*

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THE CAUSES OF ECONOMIC CRIME AND THE REVIEW OF ITS EFFECTS IN THE BUSINESS FIELD

ABSTRACT: Economic crime is a serious security risk, which is present in every country. The factors of current economic, social and broader societal conditions of global trends are considered to be the general factors contributing to the causes of economic crime. If a country's economic system is established on solid foundations, fully respecting the market economy laws, such a system is less exposed to various forms of criminal attacks. Bearing in mind the importance as well as the complexity of the matter of economic crime, this academic paper deals with the etiology of economic crime as a phenomenon. The study includes a general criminological review of the above-mentioned topic, with a special emphasis on the review of the economic crime causes in Republic of Serbia. It is evident that the emergence and development of new types of economic crime, as well as the refinement of already existing ones, have had a significant impact on the operations of business entities and on the national economy as a whole. The causes of economic crime that are deeply rooted in a particular society have an extremely negative impact on the trust given to business entities and their stable operations. The roots and causes of economic crime are based on the contradictions of socio-economic relations, which affect the outward forms of this kind of crime,

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and represent the result of a series of political, economic, geographical, legal, moral, cultural and other factors, which fundamentally negatively affects the overall economic stability.

***Keywords**: business operations, economic crime, etiology, the Republic of Serbia.*

1. Introduction

Economic crime is a serious security risk, which is present in every country. Economic crime differs from conventional crime in its complexity and phenomenological diversity, the perpetrators' motives, as well as their specialization and professionalization. The existence of "personal predispositions – a tendency to commit criminal acts and circumstances that make it objectively possible to do so under given conditions, is crucial in this form of delinquency" (Đukić, 2016, p. 173). Whether someone will commit a certain crime "very often depends on the circumstances that person is currently in, their lifestyle thus far, personal and family circumstances, their health, financial and emotional state, as well as other factors" (Matijašević & Zarubica, 2021, p. 29). Thus, individual and group criminal behavior, in any sphere, can generally "be defined as the most severe form of social deviance" (Rašević & Jakovljević, 2022, p. 179).

Economic crime is a negative social phenomenon that is constant and very dynamic, and that skillfully adapts to the socio-economic and political circumstances in society. Throughout history, "economic crime has changed its outward appearance, but it has always been of a specific nature, and thus, with regards to the perpetrators of this kind of crime, has been characterized by the perpetrators' status and power derived from their position of privilege and/or relevant role in socio-economic and political structures. It is the role, status and power of economic crime perpetrators, that make this type of crime 'invisible' in a way, marking it as the crime of the 'privileged', who cunningly use their position to gain enormous wealth and power" (Nikoloska, 2014, p. 361).

The increasing social dangers of economic crime are "related to recent times, which are characterized by booming economic development and the establishment of numerous economic ties on the overall international scale. The material and other consequences of economic crime cause an increasingly strong social reaction, as well as increasingly frequent international cooperation in its prevention and suppression" (Đukić, 2016, p. 170).

Taking into consideration the views of certain authors (Milutinović, 1990; Ignjatović, 1998; Papeš, 1986; Bošković, 1995). Banović (2002) identified the following basic characteristics of economic crime: "latent concealment – the problem of 'dark figures', dynamism and complexity of phenomenology, specialization and professionalization of the perpetrators, specificity of clues and other indications, specificity of proof and means of proof, specialization in combating economic crime" (pp. 30-43).

Economic crime damages economic relations, disrupts the stability of business operations, and thus leads to one particular class of people accumulating wealth unjustly, which causes a weakening of the state's economic power, decrease in GDP, disrespect for law and moral decline. Additionaly, economic crime has long ceased to pose a threat to national economy only (Lončar, 2021). Internationalization and continuous expansion to new areas and regions are some of the common traits of economic crime.

Bearing in mind the significance, as well as the complexity of the matter of economic crime, this academic paper will deal with the etiology of economic crime as a phenomenon. The study includes a general criminological review of the above-mentioned topic, with an additional review of the causes of economic crime in the Republic of Serbia, especially regarding the causes of modern forms of economic crime that have existed for several decades in our country.

Namely, economic crime exists in numerous forms. Modern living and working conditions, as well as IT literacy that is close to perfection, especially in business, have enabled the constant perfecting of existing forms of economic crime and the emergence of new ones, which are becoming increasingly difficult to detect.

2. The causes (etiology) of economic crime

The general factors that contribute to the causes of economic crime are considered to be "the factors of current economic, social and broader societal conditions of global trends. Additionally, they possess characteristics that are related to specific continents, regions and nations. Our country's economic conditions are a reflection of the majority of factors that have influenced social changes in the countries of Southeast Europe, the so-called transition countries. These factors primarily refer to the destruction of fundamental social institutions, the suspension of rights as the basis of social control and the replacement of legal regulations with ad hoc power relations. Widespread crime, which in various forms ranges from crime committed out of necessity

(crime caused by poverty) to organized crime, and which in one period affected most countries in post-socialist transition, brought about a huge concentration and influence of 'dirty money', the media and political love of power in one place, with disastrous consequences for social stability, not only in the economic, but also in societal, security and political spheres" (Bošković & Marković, 2015, pp. 211-212).

The roots and causes of economic crime are generally found in "social and material conditions and current economic relations in a society, i.e. in the contradictions of socio-economic relations, which affect the outward forms of this kind of crime, depending on political, economic, geographical, legal, moral, cultural and other factors. If a country's economic system is effective and established on solid foundations, with full respect for the market economy laws, such a system is less exposed to various forms of criminal attacks, because the legalities within it act as a security mechanism" (Bošković, 2009, pp. 23-24).

Therefore, in this context, the following causes of economic crime can be identified and are shown in Table 1 below.

Table 1. General causes of economic crime

Causes	**Explanation**
Errors in internal corporate governance	The most common errors of this type are: inadequate internal organization of the scope and methods of production and business; frequent law amendments which lead to new forms of corporate governance and which are not accompanied by appropriate bylaws; incomplete, non-existent or incorrect financial records.
Lack of control over business operations	The lack of internal and external control, or its weak management and functioning, regardless of the form of property, are what enables poor internal governance and financial records in companies, official bodies and organizations.
Inventory errors	Inventory is a form of control and one of the more effective property protection measures, which, whether it is regular or not, and regardless of the form of property, aims to determine the current state of goods and money in a certain facility and compare it with the book value. The common faults of inventory are manifested in the lacking expertise of the inventory commission members, in their irresponsible behavior, superficial approach to completing this important task, or in a certain coordination between individual managers or even between members of the inventory commission and the supervisor of the facility where inventory is to be taken.

Causes	Explanation
Insufficient property protection	All existing forms of property must have an effective security system, which would prevent organized attacks that can lead to appropriation, alienation, damage or destruction. The protection of all types of property that is more complete and effective is achieved through a combination of physical and technical security.
Transition process	Elections that are more frequent, the change of political parties that are in power, changing roles of government supporters and the opposition in each particular political system, the adoption of new laws, personnel changes in positions of responsibility and other important positions, changes in domestic and foreign policy, are just some of the factors present, which have a causal effect on the persistence of existing and the emergence of new forms of economic crime. In this context, the transformation of social and state ownership into private property is particularly characteristic as the dominant form of property in the newly formed economic system.
Economic liberalization	Economic liberalization on the global scale also contributed to certain new forms of economic crime emerging, because the trade between various countries became more free depending on their interests, and certain government bodies did not readily welcome such liberalization (e.g. the absence of legal and security mechanisms to direct control and prevent such crime).
Other factors	There are also other factors that enable the comission of economic crime, such as: inadequate personnel policy that has manifested itself in friendship, kinship and other netwoks, and placing untrained employees in positions of responsibility; non-compliance with the law; one executive holding several positions; being insufficiently informed; incomplete legislation and frequent changes in regulations; various other influences of certain economic and political institutions that are not law-related, etc.

Source: Bošković, M. (2009). *Privredni kriminalitet* [*Economic Crime*]. Bar: Fakultet za poslovni menadžment, pp. 23-28.

Certainly, the global economic crisis also had a significant impact on the increase and spreading of certain forms of economic crime. Although its influence on countries in transition was once described as indirect, under the influence of the major global market events and due to the unstable political situation in Serbia, there was a significant withdrawal of foreign investment from

our market, so the effects of the world economic crisis especially came to light within the stock exchange and banking sectors. As Gradojević and Carić (2017) point out, "the events that led to the financial crisis in 2008 were caused by a combination of behavioral, macroeconomic, regulatory and supervisory factors. The creation of such conditions and their interaction culminated in September and October of 2008, marked by unprecedented price volatility" (p. 16).

According to certain authors, "in addition to economic and socio-political circumstances, one of the significant factors that impact the existence of economic crime is the degree of social awareness, as well as the morality of the members of a certain community" (Nicević & Ivanović, 2012a, p. 93; Nicević & Ivanović, 2012b, p. 74).

While considering economic crime causes, in addition to the causes already mentioned, certain conditions that contribute to economic crime must also be taken into account.

Among the factors that contribute to economic crime, the following should be highlighted:

- frequent law amendments which introduce new forms of corporate governance, and which are not accompanied by appropriate bylaws, as well as the existence of legal loopholes and vagueness within the bylaws that regulate economic activity;
- incomplete, i.e. erroneous property records, as well as incorect assessments of the status, i.e. transactions of property during all phases of a business entity's activity;
- the lack of internal and external control, or its weak management and functioning, which, regardless of the form of property, enable poor internal governance and financial records in business entities;
- inventory errors are also a factor which contributes to economic crime. Namely, inventory is a form of control that aims to determine the current state of goods and money in a certain facility and compare it with the book value. The common faults of inventory are manifested in the lacking expertise of the inventory commission members, in their superficial approach and irresponsible behavior when it comes to completing this important task, or in a certain coordination between individual managers or even between members of the inventory commission and the supervisor of the facility where inventory is to be taken;
- insufficient protection of the property of business entities, i.e. failure to take effective measures in physical and technical security;
- inadequate personnel policy that is reflected in various friendships, kinships and acquaintances, the consequence of which is giving

untrained employees roles that require a high degree of expertise and responsibility;
– non-transparency of decision-making in the privatization process, as well as one person taking on several incompatible roles, etc" (Nicević & Ivanović, 2012a, p. 93).

3. The causes of economic crime in Serbia

According to Mitrović (2006), "the cumulative effect of various factors of widespread crime in current Serbian society is reflected, on the one hand, in the complex spectrum of crime, and on the other, in the deep roots that some types of crime in Serbia have. Systemic deviance is not an individual and personal phenomenon, but a structural and social one, as well as a social problem of a strategic and developmental nature. That means that it is not a transient phenomenon related to the personal traits of individuals, but originates from a 'construction error' in the implementation of the fundamental rules of a social organization. Typical systemic deviances arise from the inconsistency of the basic goals and the main ways and means of their realization within the framework of a formally organized and institutionalized structure of action and behavior. Achieving illegal, personal goals through public institutions is a model example, as well as achieving publicly proclaimed and socially verified goals through infromal arrangements that public institutions make with problematic individuals. In that sense, corruption is a typical systemic deviance" (p. 115).

With the collapse of socialist systems, "favorable conditions for the so-called transition crime are created. The planned transformation of state (social) ownership into private ownership represents an epochal opportunity for those with political monopoly in former socialist societies to gain money incredibly fast and in enormous amounts. Large sums of money and an ineffective judiciary, on their part, contribute not only to burgeoning corruption, but also to open looting of public (natural and social) resources. In Serbia, as in other former socialist countries or republics of the former Yugoslavia, the nature and scope of criminality were influenced by all the above-mentioned systemic factors, as well as numerous elements of transition, but wartime conditions are what directly caused an anomic social environment. The pervasiveness of crime within the social life in Serbia is just one characteristic phenomenon that occurred even after the last war" (Mitrović, 2006, p. 116).

According to Bošković and Marković (2015), "substantial changes in our country in the recent years, numerous social problems, and economic crises and

developments in that area have contributed to various forms of economic crime, as well as to its scope. Besides general conditions, there are also specific ones that put certain political, economic and party structures and parts of the state apparatus in a favorable position which allows them to, using the privileges granted by changes and unregulated relations, and thus by the lack of state control and social control, enable various forms of illegal profit, both individual and of those types that can rightly be considered forms of organized crime" (p. 212).

The same authors also point out that "dynamic and insufficiently legally regulated ownership changes, the monopolistic position of certain business entities and state regulation, a system of privileged and limited stock and quotas for strategic products, business with commodity reserves in conditions of consumer goods shortages, privileges when it comes to obtaining a loan and the use of foreign exchange reserves, and the exploitation of the circumstances of the foreign exchange market, contributed to some forms of legalization of illegal business and of illegal money-making through tortious acts, which, regardless of whether they were considered criminal acts, economic offenses, misdemeanors or violations of common business ethics, certainly belong to classic forms of economic crime, no matter which definition one accepts" (Bošković & Marković, 2015, p. 212).

As Bošković Mićo (2009) remarks, "in the previous period, in the territories of Montenegro, Serbia and Republika Srpska, many phenomena occurred which at that time were characteristic as etiological factors of crime in general, including economic crime, the consequences of which are felt even nowadays, and many of which still serve as favorable conditions for the emergence and development of certain forms of economic crime. Among them, the most important are:

- wars fought in those areas,
- disruption of economic and political relations between the republics of the former Yugoslavia,
- economic sanctions of the international community,
- high inflation,
- inconvertible domestic currency,
- prices in dinars, marks (Deutschmark) and checks,
- ineffectiveness of border control,
- decrease in production and product supply,
- shortage of certain goods on the domestic market,
- low income and decline in the standard of living,
- unemployment and poverty,
- monopolistic position of certain business entities,

– long duration of court proceedings for economic crime cases and
– inadequate penal policy against economic crime perpetrators" (p. 28).

4. Conclusion

Economic crime is a very complex criminological and legal category. Modern economic crime is characterized by a myriad of forms which are becoming increasingly better organized, which, among other things, makes it difficult to detect them, collect evidence and prosecute the perpetrators of specific criminal acts in this area.

Bearing in mind the significance, as well as the complexity of the matter of economic crime, this academic paper will deal with the etiology of economic crime as a phenomenon. The study will include a general criminological review of the above-mentioned topic, with an additional review of the causes of economic crime in the Republic of Serbia, especially regarding the causes of modern forms of economic crime that have existed for several decades in our country. Namely, the current trends in economic and business relations in our society, such as ownership transformation, a high percentage of the so-called "gray economy" taking part in the GDP, "money laundering", misuse of computer technology, and other factors, create a real basis for completely new forms of economic crime. Two factors that have a significant impact on the new trends and the intensity of the forms of economic crime are certainly "the attraction of large profits, as well as the already well-established forms of criminal nature from the past" (Bošković & Marković, 2015, p. 212). Today, economic crime definitely "is a global phenomenon and is one of the biggest problems that modern society faces. It attacks all countries in the world, regardless of their economic, social or political structure, so it exists even in the most developed countries. However, it most often occurs in countries with unstable political regimes, i.e. countries with a noticeable absence of a legally regulated state" (Đukić, 2015, p. 272).

Thus, it is evident that the emergence and development of new types of economic crime, as well as the refinement of already existing ones, have a significant impact on the operations of business entities and on the national economy as a whole. The causes of economic crime that are deeply rooted in a particular society have an extremely negative impact on the trust given to business entities and on their stable operations. The roots and causes of economic crime are based on the contradictions of socio-economic relations, which affect the outward forms of this kind of crime, and are the result of a series of political, economic, geographical, legal, moral, cultural and other factors, which fundamentally negatively affects the overall economic stability.

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UZROCI PRIVREDNOG KRIMINALITETA UZ OSVRT NA POSLEDICE U OBLASTI PRIVREDNOG POSLOVANJA

REZIME: Privredni kriminalitet je ozbiljan bezbednosni rizik, prisutan u svim državama. Opštim faktorima uzročnosti privrednog kriminaliteta smatraju se činioci aktuelnih ekonomskih, socijalnih i širih društvenih uslova globalnih kretanja. Ukoliko je ekonomski sistem jedne zemlje efikasan i postavljen na solidnim osnovama, uz potpuno poštovanje zakona tržišne privrede, takav je sistem manje izložen raznim oblicima kriminalnih napada. Imajući u vidu značaj, ali i kompleksnost materije privrednog kriminaliteta, rad se bavi etiologijom privrednog kriminalteta kao pojave. Istraživanje uključuje načelan kriminološki osvrt pomenute tematike, a poseban osvrt je učinjen na uzročnost privrednog kriminaliteta u Republici Srbiji. Jasno je da pojava i razvoj novih vidova i usavršavanje već postojećih vidova privrednog kriminaliteta značajno utiče na poslovanje privrednih subjekata i nacionalnu privredu u celini. Uzroci privrednog kriminaliteta koji su duboko ukorenjeni u jednom društvu, izuzetno negativno utiču na poverenje koje uživaju privredni subjekti i njihovo stabilno poslovanje. Koreni i uzroci privrednog kriminaliteta temelje se na protivurečnostima društveno-ekonomskih odnosa, koji utiču na pojavne oblike ovog kriminaliteta i posledica su niza političkih, ekonomskih, geografskih, pravnih, moralnih, kulturnih i drugih momenata, što se suštinski negativno odražava na ukupnu privrednu stabilnost.

Ključne reči: *privredno poslovanje*, *privredni kriminalitet, etiologija, Republika Srbija.*

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PROFILING OF ONLINE PEDOPHILES

ABSTRACT: Paraphilias represent a group of disorders characterized by a pathological sexual tendency or anomaly, with the impulses including intense sexual fantasies and urges that keep returning in regard to the unusual objects, activities, circumstances, and/or certain category such as the children. Pedophilia belongs to this group of disorders and it is alternatively labeled as a pedophile disorder, which includes specific incriminated actions, which in addition to prison sentences, generally result in a social stigmatization of not only perpetrators but victims too. It is a sexual affinity disorder mostly found in adults who have expressed sexual fantasies and a tendency to enter the sexual relations with children of the same or the opposite sex. Nowadays, a "digital space" has become a unique environment where these specific crimes take place, and the border between the virtual and real world is practically indistinguishable. In this digital environment, pedophiles and other sexual predators have got a new space in which they establish spontaneous contacts with potential victims (often with children). In a manipulative way, they recruit vulnerable individuals with the aim of various forms of abuse and sexual exploitation. Considering the fact that it is a delicate and variable disorder, which calls for an interdisciplinary approach, profiling these persons is crucial in relation to any countermeasure. Profiling is also necessary to systematically investigate the symptoms, nature, and factors of psychopathological conditions and deviations in the existences of the affected persons. After all, it is one of the ways of reaction to make pedophilia more visible as a part

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of preventive programs before the late manifestation. In this paper, there are applied the methods of a quantitative and qualitative content analysis, comparative analysis (reaction to pedophilia) as well as a descriptive and analytical statistics. The purposeful goal is to recognize pedophilia as a sociopathological phenomenon that requires an adequate response from the social community.

Keywords: *pedophilia, online pedophiles, profiling, treatment of pedophiles.*

1. Introduction

Pedophilia, among paraphilias, is the most prevalent phenomenon and is rooted in all layers of society. Based on the available epidemiological data, 10% to 20% of children in the general population were abused by the age of 18, and 20% of adult women were victims of persons who prefer exhibitionism and voyeurism. The word "pedophile" itself is used in everyday communication in an expansive sense and is very often identified with the qualification of individuals who have been convicted as "sexual abusers of children" (Bjelajac, 2020). "Pedophilia does not always occur in isolation, because men with this disorder often have a significant history of psychiatric disorders, which in extreme cases can overshadow the discovery of etiology. Whether it is a secondary phenomenon related to this tendency's emotional and social consequences or whether these are true comorbidities is still difficult to prove" (Tenbergen et al., 2015). So, from a clinical point of view, there are people with pedophilic disorder who limit their obsession with sexual contact with children exclusively to fantasy, as opposed to the category of pedophiles whose behavior inevitably leads to the commission of a criminal act, due to the inability to refrain, that is, the inability to achieve self-control. Namely, fantasy itself has no potential to satisfy an exaggerated sexual desire (Bjelajac, 2020). Following the patterns of behavior, the third category of perpetrators of crimes against children, who were not the initial product of pedophilia, is also recognized. "These are surrogate types of sexual offenders, and they can be diagnosed with a condition in the category of impulse control disorder, which represents a lack of sexual inclination towards children, but the act of *Child Sexual Abuse* has been committed" (Tenbergen et al., 2015).

"According to the International Statistical Classification of Diseases and Related Health Problems (Chapter 5 – Mental and Behavioral Disorders – F00-F99; Personality and Behavioral Disorders of Adults – F60-F69), pedophilia (F65.4) is designated as sexual inclination towards children, (boys

and/or girls), usually in prepubescent or early pubertal age" (World Health Organization, 2016). According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), in order to be diagnosed with the pedophilic disorder, the following criteria must be met:

"1) Recurrent, intense sexual fantasies, urges, or behaviors involving sexual activity with a prepubescent child (13 years of age or younger) for at least six months; 2) these sexual urges act or have caused significant distress or deterioration in social, occupational, or other important areas of functioning; 3) the person is at least 16 years old and at least 5 years older than the child in the first category. However, this does not include an individual in late adolescence who is involved in a permanent sexual relationship at age 12 or 13" (American Psychiatric Association, 2013).

Pedophilia, as a phenomenon, is evidently complicated by the causes of the disorder itself, because despite the fact that there is evidence that pedophilia is generated in destructive families, it is unclear whether it is innate mental anomalies or patterns of learned behavior. By placing childhood sexual abuse in a historical context, we can gain interesting insights into pedophilia in ancient Greece, ancient Rome, and Islamic culture. Girls married older men, and at the same time, flirtation and sexual relations between bearded men and immature boys were not uncommon, but only in certain circumstances, in certain circles, in certain cities and at certain times. Among other things, family historians have found that adults in elite households in 15th- and 16th-century Europe sometimes treated young children as sex toys. It goes without saying that according to the values of the time, the modern concept of pedophilia could not exist, nor could the modern psychiatric definition be applicable.

"The causes of pedophilia (and other paraphilias) are unknown. There is evidence that pedophilia can run in families, although it is not clear whether this stems from genetics or learned behavior. A history of sexual abuse in childhood is another potential factor in the development of pedophilia, although this has not been proven. Behavioral learning models suggest that a child who is a victim or observer of inappropriate sexual behavior may be predisposed to imitate those same behaviors. These persons, who are deprived of normal social and sexual contact, may seek satisfaction through less socially acceptable means. Physiological models explore the potential link between hormones and behavior, particularly the role of aggression and male sex hormones. Individuals may become aware of their sexual interest in children during puberty. Pedophilia can "be a lifelong condition, but pedophilic disorder includes elements that can change over time (Psychology Today,

2022)." "Research related to the etiology of pedophilia suggests a complex and multifactorial phenomenon in which genetic influences (Blanchard et al., 2007), stressful life events, and specific learning processes influence (Jespersen, Lalumiere & Seto, 2009), as well as disturbances in the structural integrity of pedophile brains can generate this specific phenotype of sexual orientation (Schiffer et al., 2007). Initial theories relied mainly on psychological mechanisms to explain pedophilic tendencies, including classical and operant conditioning, as a behavioral mechanism through which abuse-abuser theory (Freund, Watson & Dickey, 1990) attempts to explain childhood attachment style as a marker of dysfunctional cognitive sexual schemas in adulthood (Beech & Mitchell, 2005). Social factors such as childhood abuse, as well as easy access to social platforms, including pornography spread over the Internet, have also been identified as potential contributors and/or identifying factors for pedophilia and sexual abuse" (Beech, Elliott, Birgden & Findlater, 2008). However, the fundamental causes of pedophilia for the professional public are still disputed and largely unfathomable. However, several different factors have been identified as potential causes or indicators of pedophilic tendencies of individuals. Biological, psychological and social factors suggest that pedophilia can be multifactorial.

2. Digital media as an unlimited space for the concentration and multiplied presence of sexual predators

"The digital world has led to new variability in the development of the situation since the circumstances that can lead to digital crime can develop in both the real and the virtual world. Crimes committed on the basis of and under the influence of computer games, communication on social networks, and various forms of Internet fraud require a criminological analysis. Scientists increasingly point to the discrepancy between old, traditional forms and methods of information research and "new" crimes with new illegal manifestations in the digital sphere or with the use of the digital sphere of life" (Bjelajac & Filipović, 2021a). "Generally speaking, the space of digital media is unfathomable. Certain digital media have a dominant social component, and through which, in addition to the possibility of exchanging text, audio, photo and video content, it is also possible to achieve close and detailed communication, which together can result in the creation of a real relationship between two or more users in the virtual world. Social networks, or social media, provide users with these opportunities through the activation of certain

psychological mechanisms. And that is the initial reason for their popularity and spread" (Bjelajac & Filipović, 2021b).

"In fact, modern society is a society of countless illuminated screens. Those screens are not just a two-dimensional representation of traditional media content, on the contrary – they are a means of realizing the greatest interconnection between people and content. There is another defining feature of this new media space and new digitized culture and society, and that is the nominal anonymity of users. To use the largest number of Internet platforms, services, and media, it is not necessary to leave verifiable personal data, which leads to a dualistic perception of ethics – different from either side of the monitor. And while a real human being sits in front of the display, his or her avatar lives and acts in the digital space, which most often cannot in any way suggest the real identity of the user of that avatar" (Bjelajac & Filipović, 2021b). Moving to the digital spaces allowed sexual offenders to have a "new playground", primarily due to the element of nominal anonymity, which is achieved through numerous options of fictional identities and obscurity in the virtual space, at least until they decide to come out of the comfort zone and become exposed. That is a moment of particular exposure for victims.

It is evident that with the global use of the Internet, sexuality in full light has reached wherever there is a person. Nature, often primal human instincts, acquired the "right of citizenship". Videos of pornography, pedophilia, and child prostitution dominate the networks. Research by the website ExtremeTech showed that about one-third of all traffic on the Internet falls on sexually-connoted content, and the largest site for the distribution of "adult" content, Xvideos, has 4.4 billion visits per month (Roeder, 2014). About 29 petabytes of pornographic material are sent every month, which means that 50 gigabytes of explicit sexual content are transferred every second (Ferreira, 2014). "It is surprising that children visit the Internet even at the age of 4, and before starting school they have almost mastered surfing the net. For several hours a day, the little ones are faced with a world without any restrictions, so different from the world in which they normally live. So naive and innocent easily fall prey to internet predators. With the Internet, predators have gained fast and anonymous access to children, a place where they can hide their identity and roam the net without restrictions. Internet predators are, in principle, sexual predators. We usually imagine them as people who wander around school playgrounds and lurk there for their potential victims. However, reality has changed. Today's sexual predators stalk victims by hiding behind computer screens and taking advantage of children's excessive curiosity and gullibility, with the anonymity offered by the Internet" (Bjelajac & Filipović, 2020a).

Indeed, it is about "modern pedophiles", exaggerated and vile personalities, who, with the help of modern communication technologies, widely remove photos of children from the Internet that are carelessly posted by relatives, then comment on them and try to reach the victims.

"Pedophiles use the Internet in a variety of ways, whether they use it to: connect with children, make friends, arrange live dates, or as a means of finding, storing, and distributing child pornography. They also use the Internet as a means of connecting with each other, in pedophile networks, where they share experiences, advice, videos, and pictures. However, the Internet is not useful for pedophiles only because of their easy access to children, their identities, and child pornography. The Internet is an ideal accessory for pedophiles because it offers them complete security and absolute anonymity. Most pedophiles live seemingly normal lives. In the past, most of these people, for fear of society's reaction, did not dare to realize their sexual fantasies. Now the Internet gives them that possibility" (Bjelajac & Filipović, 2020b). Far from the reach of law enforcement, in the warmth of their own home with their favorite beverage in hand and dimmed lights, in complete anonymity, they cruise the Internet and enter someone else's private virtual world. In it, through interaction with children, they heal their sick frustrations. They watch child pornography and give plenty of "freedom" to illicit and unlived sexual fantasies. Additionally, they are not subject to the code of society and the environment in which they work, because the activities they engage in are not observable in the real world in which they would be stigmatized and subjected to protective measures.

3. Sociopathological profile of online sexual predators

In our digital/virtual world, we encounter programs every day that led many individuals to be fascinated by criminal behavior and have an interest in what causes people to commit such acts. "Deviant behaviors, related to disorders that are socially conditioned, harmful and unacceptable, because they deviate from established standards and norms, are known as social pathology. Under social deviations in social pathology, we include those types of individual and group behavior that result in the appearance of socially destructive, pathological, and delinquent behavior. In a broader sense, we mean all those cases that cause a social reaction due to the threat of universal social values" (Bjelajac & Filipović, 2021b). In most cultures, pedophilia is defined as deviant behavior, which is immoral and unacceptable and can be considered a social pathology, because it violates social norms.

Most pedophiles, after all, like other abusers, have an antisocial personality disorder. Such people lack empathy, violate social norms, put themselves, their rights and interests above the rights and interests of others.

"People with antisocial personality disorder usually do not care about what is right and what is wrong and often do not respect the rights, wishes and feelings of other people. These individuals tend to contradict others, manipulate them, be rude or treat them with cold disinterest. They can often break the law and get into trouble, showing no guilt or remorse. They may lie, act violently or impulsively, and have a problem with drug or alcohol abuse. These traits often make people with antisocial personality disorder unable to fulfill their family, work or school obligations" (Psihoterapijsko savetovalište Sinteza, 2015). Signs and symptoms include:

- neglect of personal and the safety of others,
- continuous distrortion of reality, deception, intimidating others, for personal gain where feelings of remorse are excluded,
- absence of understanding or acceptance of positions and thoughts of others, feeling of superiority and exhibitionism,
- affinity to criminal activities often accompanied by prison experiences,
- abuse of substances and alcohol,
- permanent uprising against authority,
- child and spousal abuse,
- hate, irritability, impulsiveness, aggressiveness and violence,
- absence of empathy.

A universally accepted profile of online sexual molesters does not exist, although statistics point that these usually are adult males. It is a stereotype that online sexual predators/pedophiles are people who are easy to identify, because they are individuals from the social margins, uneducated, low intelligence, and indisposed. This is of course wrong and in real situations very often different. Namely, the age, formal education, occupation, and drives of these persons vary depending on their "interests", but in the mechanisms of their actions in recruiting victims, some common traits can be identified.

"Recruitment on the Internet consists, as a rule, of several steps. The first step is to gather information about the potential victim. Internet predators visit various places on the Internet (profiles on social networks, blogs, forums, chat rooms) in order to collect as much personal information as possible about the victim: his age, gender, physical appearance, place of living, personality traits, interests, hobbies, people with whom communicates and the content

of communication. Once they have gathered enough information about the potential victim, the next step is to initiate communication with them. When communicating with a potential victim, Internet predators almost always conceal their true identity, pretend to be someone else, usually peers (of similar age and interests), hide behind fake names, nicknames, photos, etc. At the beginning of communication, as a rule, they ask general and not too personal questions, make jokes, tell jokes or in other ways try to entertain, win over a potential victim and establish a *friendly relationship* with them" (Žunić-Cicvarić & Kalajdžić, 2021). "When they *get closer* to the victim, they ask her more direct questions: from which device is she communicating (personal or shared), where is that device located, is she alone in the room, at home, where are her parents, what time are they present, etc. Internet predators try to show themselves in the best possible light. They show a willingness to listen and understand, discuss important topics and current problems (relationships with peers and important adults) and provide unreserved support. They usually offer free gifts, give unselfish praise, say what they think the victim wants to hear, and take their side. When they win the victim over and gain their trust, they begin to show their true face, manipulate and control their behavior. They can insist on getting accurate information about what the victim does, where and when they stay, and who they hang out with, but also show resentment, anger, and rage if they don't get the requested information" (Žunić-Cicvarić & Kalajdžić, 2021). Online pedophiles usually ask their victims to send them photos and/or videos of themselves naked. In order not to arouse suspicion, they assume someone else's identity and send someone's photos, and videos, as their own. Under the veil of secrecy, they exchange messages and links with explicit sexual content. This is followed by a phase of blackmail with an ultimatum to deliver as much such content as possible with a tendency to get to know the victim.

"Staying true to its commitment to making the internet a safer place for children, Microsoft has come up with an effective solution in the form of *Project Artemis*. It is an automated system designed to track pedophiles by looking into their conversations with children to spot similar patterns of speech and words. *Project Artemis* has a rating-based system that, after examining the conversation, determines the possibility of including pedophiles in communication and assigns a rating to the person" (Informacija, 2020). Although these people are difficult to recognize, some general characteristics are visible (B92, 2010):

- They are usually respectable people in society;
- Most of them have a better education;

- A large percentage of them have a job that allows them to be close to their children;
- They prefer the company of children, rather than adults;
- They try to gain trust and friendship with children. They rarely force sexual contact, but the physical contact itself comes gradually from touching, lifting, and holding on one's lap, to hugging and kissing;
- They try to please children with sweets, toys, video games, money...;
- Their target group is children in trouble, with a sad life story or emotionally neglected;
- They are mostly family people, who have no other criminal offenses;
- Many were victims of sexual violence in their childhood;
- Some marry mothers who have children, who are their target group;
- They derive pleasure from children in various ways. Some just look at children live, or in photos, others take photos of them, and others need physical contact...;
- Even though they don't have children, they often keep items in the house that could be of interest to children.

4. Significance of profiling pedophiles

There is no way you can reliably conclude that someone is a pedophile. It is wrong that some people who, because of their occupations, show special attention and affection towards children (such as teachers and sports coaches), are easily classified as pedophiles. Most people who sincerely work for the love of children are not pedophiles. Moreover, it often happens that a child can be sexually abused in the family, but also by a friend or a trusted adult. Parents, social workers, and authorities that perform tasks related to the protection of citizens' safety, do not have patterns for recognizing pedophiles, because they do not look different from anyone else. Namely, everyone in the environment can be a pedophile. Therefore, identification can be quite difficult, especially since abused children initially trust most pedophiles. This especially applies to "friends through social networks". Signals, such as strange comments about children, what he searches on the Internet, and what he is fond of, can indicate pedophilic tendencies. The only way to recognize a pedophile is to not close your eyes to the indicators that something is wrong.

There is a clear classification of pedophiles depending on which developmental stage of children they are attracted to. Persons whose attention is occupied by prepubescent children are called *hebephiles*. Those who are attracted to pubertal children are *ephebophiles*. It goes without saying that the

circumstances of each case are special and not all peculiarities are applicable in all situations, certain elements could be considered common for different types of pedophiles (Bjelajac, 2020):

- They are usually men in their thirties and fifties;
- Mostly the perpetrators attack and/or show sexual excitement toward the victims between the ages of 8 and 13;
- In the case of sexual abuse, which is less often carried out by women, the age can vary, the victims can be younger than 5 years old or they are adolescents;
- Pedophilia in the case of a preference for male children is chronic, while in the case of a preference for female children, there is a possibility that this model of sexual excitement may be lost over time;
- The presence of very low self-esteem, lack of tolerance for stressful situations, the presence of a state of reservedness, reticence with difficulties in mutual relations, and insecurity with adult women is observed;
- Experiences indicate that many did not have sexual relations with adult women at all;
- Some pedophiles arere married and have children, and are considered respectable members of the community;
- They permanently seek contact with minors and show persistence and willingness to patiently "build a relationship";
- In individuals, previous traumatic experiences, mostly in connection with abuses in childhood, were noted;
- Very often they refrain from violence even though there were sexist and cruel elements in practice. Their method of operation is based on approaching and establishing a relationship of trust with the minor victim of abuse;
- They try to minimize the importance of the act and the mental and physical damage caused to the victim;
- In general, as a rule, they have a significant lack of empathy.

In the classification of the profile of pedophiles, the presence of two basic types was noted. Situational/accidental pedophiles may engage in sexual activities with children under certain circumstances. These are adults whose sexual preference is not limited exclusively to minors and they have no special preference for the type and age of the victim. Their children served as spontaneous "sexual substitutes" to satisfy their psychopathological urges due to various stressful situations. Preferential pedophiles have a clear and consistent preference for sexual contact with children rather than adults. For

this broad category of child abusers, patterns of child abuse and the tendency towards children as sexual objects are part of life habits. They have elaborate techniques for having children and absorption into sexual fantasies aimed at children. They have a strong urge to search for their objects of desire and this channels them to places where minors usually stay. Preferential pedophiles can be classified as persons with a disorder who seduce children into sexual activity during a certain period; to people with a disorder that we can call "introverted pedophiles", who impulsively pick up small children they don't know for brief sexual contact; and on persons with the features of a "sadistic pedophile", who is not only sexually attracted to children but also physically abuses them.

There is quite a wide range of activities that pedophiles direct toward children. Many of them generally restrain themselves and only touch children and their intimate parts or satisfy themselves with oral sex with children. Vaginal and anal penetration are a less frequent form of pedophile affinities. Some pedophiles simply never act on their pedophile tendencies, but everything remains at the level of perception or satisfaction with Internet addresses and pedophile literature. On the other hand, some pedophiles cannot help themselves and carry out their pedophile activities. In essence, the following activities against children dominate: undressing, masturbation, touching children genitals, removing the clothes of children, demanding oral sex…

From everything mentioned before, it can be concluded that pedophilia is a challenging and multilayered disorder, the consequences of which children/victims feel through constant psychophysical traumas that often follow them in different ways throughout their lives. Therefore, the profiling of pedophiles is very important, not only because of the characteristics of the perpetrator's behavior based on the analysis of the committed crime but for the identification of potential perpetrators in the context of early detection signs, before the crime takes place. Criminal profilers specialize in identifying potential perpetrators and those behind serious crimes. They link established patterns and motives to make perpetrators more predictable and easier to catch. Using techniques such as extensive knowledge of behavior and statistical probabilities, profilers conduct their activities in collaboration with forensic teams and other members of law enforcement.

By combining technical skills and applying traditional basic methodologies, profilers can help catch online pedophiles. Today, this type of pedophile is on the rise and represents one of the fastest-growing types of illegal activities and the biggest threat to children's safety. Consequently, understanding this type of criminal behavior requires specific skills and knowledge to address it, which is a vital focus in current profiler training programs.

5. Discussion

Pedophilia is a mental disorder that induces a sexual obsession with children of the same, opposite, or both sexes. Due to the severity of the consequences, this type of perversity is strictly punishable by law in all countries. It is a kind of personality disorder that can be generally defined as characteristic patterns of thinking, and emotions in interactions with others, which are exhibited in certain life circumstances. In other words, it is about long-term and inadequate patterns of own experience and behavior that differ significantly from what is expected in the respective culture. Considering that with the advent of the Internet and social networks, pedophilia has become more dynamic and intense, and child victims are increasingly vulnerable and exposed, the perspective of detection and treatment of pedophiles is increasingly discussed. Since the "army" of online pedophiles is invisible, mobile, and inventive, profiling these sexual predators is crucial to their demystification.

"In addition to the above, setting up fake profiles on social networks can be particularly effective in detecting pedophiles. For example, the internet profile *maloletna13bg* (trans. underagegirl 13bg) is designed to inform the visitor that the person is a 13-year-old underage girl from Belgrade, and the profile was created at the Internet chatroom Krstarica (it is a server that enables textual communication by IRC (Internet Relay Chatting)). Krstarica's forum is the best-known forum in the country and the region, it can be accessed from anywhere in the world, with 1.8 million monthly visitors and 35 million exchanged messages. The person behind the decoy waited for potential pedophiles to establish communication, and every contact was established by visitors and not initiated by the decoy. The profile was visited by 1,095 Internet users for seven days, in intervals between 9-12h and 22-01h, with the fact that the number of visitors to the profile increased in the evening and during the weekend. The data collected using the virtual profile *maloletna13bg* indicate that the majority of visitors were men (89.86%) and of that number 74.08% tried to establish contact with the girl from the profile directly or indirectly alluding to sex. Some visitors were predisposed to send explicit photos to the girl without any provocation on her part" (Bjelajac, Merdović & Banović, 2020). On the one hand, this research tells us how vulnerable children are on the Internet, and on the other hand, it suggests that it is necessary to develop special models and preventive programs to help pedophiles. In those programs, pedophiles are not necessarily treated as criminals, but as patients who require different treatment modalities.

"Some countries that offer programs of preventive treatment often have different treatment modalities. Some countries established programs of therapy led by professionals, while other countries only have anonymous support programs on the Internet. The basic problem of implementation of such programs on a global level is the anticoincidence of laws and regulations on an international level. Countries that managed to organize and realize a string of programs for pedophilia prevention are Germany, Canada, and the USA. The success of certain programs helped to spread them to other countries (the UK, Netherlands, etc.). The majority of programs are dedicated to helping individuals with sexual affinities toward children to report to counseling services to get the necessary help. Other programs are dedicated to the post-penal period after the sentence is served, to prevent recidivism" (Bjelajac, Merdović & Banović, 2020). "When we discuss the treatment of pedophiles, it is limited only to the cases of expressed pedophile behavior, the offenders, and its goal is to prevent recidivism. There are numerous variations in the application of treatment measures depending on the country. One of the methods that are used is castration. In some countries, castration is chemical (hormonal therapy) while in others the castration is performed physically (surgically). In the United States of America, both chemical and surgical castration is permitted only in certain states, and these states are significantly different in financial obligations, castration method, and whether castration is discrete, mandatory, or voluntary" (Scott & Holmberg, 2003). In many legislations, such forms of sanctions are not prescribed, because preference is given to a combination of behavioral-cognitive therapies and pharmacological treatment, which are evaluated individually for each person. The goal of this treatment approach is to change sexual affinities and activities, that is, to help patients refrain from illegal actions caused by an uncontrolled sexual drive towards children. Although the castration-based approach is considered invasive, it should be considered, especially in terms of the feasibility of chemical castration for recidivist pedophiles who have failed to progress with previous psychiatric interventions and pharmacological therapy.

6. Conclusion

Although the conceptual definitions of pedophilia are essentially agreed upon, the word pedophile is too easily pronounced following the prevailing opinion that any older person who approaches children and shows intrusive attention shows pedophile tendencies. Even though this disorder of sexual

choice has recently been increasing in the focus of the professional public, in terms of more intensive and extensive research, there are conflicting opinions as to what causes this disorder. In the past, many scientists believed that the triggers for pedophilia should be sought in psychological and social influences during the early phase of life, growing up in dysfunctional families with traumatic experiences related to violence, neglect, and sexual abuse. Today, the thinking is that it is a deep-rooted predisposition that does not change. Some scientists go so far as to discover a series of associations that indicate that pedophilia has biological roots, and they believe that pedophilia is the result of a brain disorder, most likely caused by bad connections in the brain.

There is a different perception among the professional and general public about who pedophiles are and whether they differ from the rest of the population. They can be of any profession, education, socioeconomic status, religion, and nationality. They are often trusted and respected members of the community. They can be heterosexual, homosexual, or bisexual. They prefer contact with children, and are mostly attracted to pre-pubescent boys and girls, and find different ways and places to be around them. Usually, through trust and friendship, they gradually tend towards physical contact. Their marital union is often troubled by disorder in sexual function and serves as a shield for true affinities and practices of pedophiles. It is important to note that they can operate independently or be involved in organized chains within the Internet, such as NAMBLA (North American Man/Boy Love Association), and other specific platforms where groups with interest in pedophilia operate.

Today, the modus operandi of pedophiles has left the framework of children's playgrounds and moved to the digital/virtual world, where their manipulative strategies, mobility, inventiveness, and invisibility due to false identities come to the fore. In that online space, there are numerous opportunities to select a target child/victim with the traits they prefer. The victim exposed to the violence of these abusers remains with psychophysical trauma and consequences, and the level of impaired mental health is difficult to balance and bring to the extent of a satisfactory state of health.

By profiling online pedophiles, chances are created for early detection of these sexual predators and frameworks for preventive action to prevent the crime from happening. Profiling is a good format for educating children and their self-defense through learning to recognize the personal traits of online pedophiles. Among other things, profiling people with this disorder can help identify triggers for impulses that encourage behaviors that include this form of paraphilia, and ways to avoid these stimuli, that is, to not think about them. Finally, through the study of the psychology of crime, profilers

can be useful for choosing a therapeutic approach model for the purpose of breaking the learned chain of unacceptable sexual behavior and modifying it towards socially acceptable sexual behavior. In this direction, social skills training and sexual education not only encourage efforts to prevent crime but also stimulate the spirit of tolerance and the development of empathy for the victim.

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PROFILISANJE ONLINE PEDOFILA

REZIME: Parafilije su grupa poremećaja koje karakterišu patološka seksualna sklonost ili seksualna anomalija, sa impulsima koji uključuju intenzivne seksualne fantazije i porive koji se stalno vraćaju u odnosu na neobične predmete, aktivnosti, okolnosti i/ili određene kategorije, poput dece. Pedofilija pripada ovoj grupi poremećaja i alternativno se označava kao pedofilni poremećaj, koji obuhvata specifične inkriminisane radnje, koje obično imaju za ishod pored lišenja slobode, žigosanje ne samo izvršilaca već i žrtava. U pitanju je poremećaj seksualne sklonosti, pretežno odraslih osoba koje imaju izražene seksualne fantazije i tendenciju da stupe u seksualne odnose sa decom istog ili suprotnog pola. U današnje vreme "digitalni svet" je postao jedinstveno okruženje u kome se vrše ovi specifični zločini a granica između virtuelnog i stvarnog je praktično nevidljiva. U tom digitalnom ambijentu, pedofili i drugi seksualni predatori dobili su prostranstvo, u kojem uspostavljaju spontano kontakte sa potencijalnim žrtvama (često i sa decom). Na manipulativan način regrutuju ranjive pojedince u cilju različitih oblika zloupotreba i seksualnog iskorišćavanja. S obzirom da se radi o delikatnom i varijabilnom poremećaju, koji zahteva interdisciplinarni pristup, značaj profilisanja ovih lica od krucijalne je važnosti u odnosu na bilo koju protivmeru. Profilisanje je takođe važno kako bi se sistemski istražili simptomi, priroda i činioci psihopatoloških stanja i

odstupanja u bivstvovanju ovih pojedinaca. Uostalom, to je jedan od načina reakcije da se pedofilija učini vidljivijom, kao deo preventivnih programa pre zakasnele manifestacije. Primenjene su metode kvantitativne i kvalitativne analize sadržaja, komparativne analize (reakcija na pedofiliju) i deskriptivne i analitičke statistike. Svrsishodan cilj je da se pedofilija prepozna kao sociopatološka pojava koja zahteva delotvoran odgovor društvene zajednice.

***Ključne reči**: pedofilija, online pedofili, profilisanje, tretman pedofila.*

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SIGNIFICANCE AND ECONOMIC FUNCTIONS OF SECURITIES

ABSTRACT: Globalization of markets and internationalization of trade significantly affect both the regional and national ways of doing business, economic trends, and economic balances, as well as the competitive positions on the world market of knowledge and capital. Securities have a great importance in business. Theory and practice agree that the issuance of securities represents a significant social and economic event, both locally and regionally, as well as globally. Bearing in mind the topic of the paper, in the subheadings there have been analyzed the basic issues related to securities – the concept and essential features of securities, the legal nature and types of securities, the creditworthiness of securities, the legal treatment of securities in Republic of Serbia, as well as the importance and economic function of securities.

Keywords: *securities, financial markets, business operations, the Law of Contract, Republic of Serbia.*

1. Introduction

Securities are written documents in which "an indivisible right is incorporated, and with which the issuers undertake to fulfill the obligation written on the paper" (Selak, 2016, p. 16).

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According to Article 234 of the Law of Obligations (1978), "a security is a written document by which its issuer undertakes to fulfill the obligation written on that document to its legal owner". As Jakovljević (2019) points out, "the jobs of economic entities can be jobs in the circulation of goods and jobs in the circulation of money (banking, bills of exchange and check law)" (p. 85). It is important to point out that "the economy in every society and all stages of its development had great social and political importance. Economic relations in the field of production, distribution, and exchange have always been at the basis of social life, reflecting on numerous social relations and activities" (Vučković, 2014, p. 54).

According to this, "the basic function of financial markets is to direct funds from those who have a surplus to those who have a shortage of funds. Individuals, families, firms, and the public sector, who earned more than they spent, direct excess income to those who have a shortage of resources through the financial market. On one side are lenders who lend funds. On the other side are the borrowers, who have to borrow funds to finance their needs" (Šabović, 2009, p. 61). The same author states that "in direct financing, lenders sell their excess assets to borrowers on the financial market." Lenders offer financial instruments in the form of the sale of securities, which represent the right to claim future income from the borrower. If the firm needs funds, it issues, for example, bonds as debt securities and undertakes periodic payments to the lender" (Šabović, 2009, p. 61). Theory and practice agree that "issuance of securities represents a significant socio-economic event both within the framework of the business of a legal entity and within the framework of a state community in the implementation of its economic policy" (Jovićević et al., 2019, p. 383).

Securities must have "prescribed elements that constitute the form of a legal transaction. The formality of a security is the right that its legal owner can claim the degree of right up to the limit that is written on the security. Security always refers to a thing, a monetary or commodity claim, a benefit or a value, which indicates a correctly specified property right" (Carić, 2000, p. 125).

Bearing in mind the topic of the paper, the following subheadings will analyze the basic issues related to securities – the concept and essential features of securities, the legal nature and types of securities, the creditworthiness of securities, the legal treatment of securities in the Republic of Serbia, as well as the importance and economic function of securities.

2. Concept and essential properties of securities

Securities are "written documents containing some civil right associated with the document itself" (Velimirović, 1996, p. 61; Vasiljević, 1997, p. 747; Jankovec, 1996, p. 563).

From the legal definition of securities, which is stated in the introductory part, it follows "that a security is always a written statement, that the security contains the written permission of the issuer, that the written obligation entered into the security must fulfill its legal owner, i.e. to the legal holder of securities" (Carić et al., 2016, p. 309).

This term of securities contains several shortcomings, "because this term does not indicate all essential properties of securities:

1. It does not indicate the type and nature of the obligation of the issuer of securities. In the case of securities, we cannot deal with every type of obligation, but only with certain that are predominantly and primarily of a property nature. Securities may contain, in addition to property obligations, some other obligations, but they cannot be without property obligations.
2. Securities may contain certain authorizations for the holder of securities that are not at the same time direct and immediate obligations of the issuer of securities. For example, stockholders can manage a joint stock company based on the authority and share as a security, and not based on the direct and immediate obligation of the issuer of this security.
3. One of the important properties of securities is related to a very high degree of formal strictness of securities, which is not stated in the aforementioned term of securities. A security that does not have all the essential elements does not exist because securities are strictly formal documents.
4. Securities create a very strict obligation not only for the issuer, but also for every debtor under that security, which deprives the debtor of the possibility of certain types of securities, but this strictness is much more pronounced with all types of securities than with written documents.
5. In every legal concept of securities, one of the most important properties of securities is not emphasized, which is the principle of incorporation, i.e. the principle that the right established in writing on the security cannot be exercised in any other way, but only by using the security. The principle of incorporation distinguishes security from several other written documents in which the obligation

of the issuer towards the holder of that written document can be ascertained. While other written obligations of the issuer of the written document towards the holder of the written document can be realized in other ways, in the case of securities, this obligation cannot be realized without securities" (Ristić et al., 2013, pp. 157-158).

The essential properties of securities, "which must exist in every single form of securities, are:

1. The security must always be in the form of a written document.
2. A property or material right must be established in the security, although in addition to the property right in the security, another right, a right of a different type, can also be established at the same time. Their property rights must be stated in each security.
3. The right stated in the security cannot be exercised and cannot be transferred to another without the same temporal transfer and possession of the security. This is the principle of incorporation, which is one of the essential principles of all emerging forms of securities" (Carić et al., 2016, pp. 311-312).

3. Legal nature and types of securities

In explaining the legal nature of securities, "contract theory and the theory of unilateral declaration of will stand out" (Babić, 2006, p. 325).

According to the contract theory, "the obligation of the issuer of the security arises based on the contract between the issuer and the holder of the security." Contracts are also concluded in favor of later holders of securities who are authorized to demand immediate fulfillment of the obligation from the debtor" (Babić, 2006, p. 325; Radojčić, 1922, p. 570).

According to the unilateral declaration theory of will "an obligation from securities is created by a unilateral declaration of will of its signatory as the issuer, as well as every subsequent signatory of that document, and not by the conclusion of a contract between two parties" (Babić, 2006, p. 325). This theory is accepted by the current Law on Obligations (1978) and is applied exclusively to monetary securities (promissory note, check, etc.).

Regarding the types of securities and their division, it should be emphasized that in the commodity-money circulation of modern economic systems, a large number of various securities are in circulation. There are different criteria for the classification of securities. Table 1 shows the basic criteria for the division and types of securities according to each criterion.

Table 1. Criteria for division and types of securities

	Criteria for dividing securities	**Types of securities according to individual criteria**
1.	According to the method of determining the holder of rights from the security	Registered securities, where the right holder is always indicated on the security;
		Securities by order, in which the holder of rights is indicated on the security, but the right holder is considered to be any other person designated by the designated holder of rights from the security by his order;
		Bearer securities are securities where it is considered that the holder of rights from the security is every bona fide owner of that security;
		Alternative securities, in which the holder of the right is determined in an alternative way, by a combination of the aforementioned ways of determining the holder of the right of the security;
		Mixed securities, which consist of two or more parts, and for those parts, the right holder is determined in different ways.
2.	According to the character of the incorporated right in the security	Obligational-legal securities that incorporate some bond right, most often it is a monetary claim;
		Real-legal securities contain some real rights. According to the types of real rights, these securities can be further divided into proprietary and lien securities. Pledged securities are further divided according to whether it is a right of pledge concerning movable or immovable property;
		Securities with the right to participate in the so-called corporate effects, ie. corporate securities. In all securities, in addition to some property rights, the right of management and decision-making in certain legal entities is also incorporated, hence the name of these securities. The most distinctive security with the right to participate in a share that gives the holder of that security the right to participate in the management of the joint stock company. With us, this group of securities includes the certificate of joint money means, as one of the forms of pooling work and funds, based on the appropriate self-governing agreement on pooling.

	Criteria for dividing securities	Types of securities according to individual criteria
3.	According to the degree of connection with the basic legal work for which there was an issue of securities and according to the possibility of the influence of the basic legal work on the realization and transfer of rights from the securities	Abstract securities where the basic legal transaction is not visible from the security and does not affect the realization and transfer of rights from the security;
		Causal securities are securities that are legally dependent on the basic legal transaction from which they were issued, both in terms of the realization and transfer of rights from the security. While causal securities may be more equitable, abstract securities create a higher degree of legal certainty.
4.	According to the method of creation of rights from securities	Constitutive securities in which the issuer of these securities must be constituted by some new right that is stated in the security;
		Non-constitutive or declaratory securities contain a right that was not constituted by the issuance of the securities but existed upon the issuance of the securities, and by the issuance of the securities, this right is only declared against third parties.

Source: Ristić, Ž, Srdić, M. & Ristić, K. (2013). Akcionarstvo i hartije od vrednosti [Shareholding and securities]. Beograd: EtnoStil, pp. 162-163.

4. The creditworthiness of securities and bond rating systems

The creditworthiness of the security depends on the "assessment of the business of the issuer, that is, the issuer of the security." Stock indices are used to monitor the creditworthiness of securities on the capital market. The most famous stock market indices are New York: Standard & Poor's Composite 500 index -SPCI; London: FTSE index; Tokyo: NIKKEI; Paris: CAC 40 index; Frankfurt: DAX; Singapore: SIMEX and Hong Kong: Hang Seng" (Šabović, 2009, p. 65).

Investments in securities "may involve several types of risk. The risk is especially high with those securities issued by private corporations and some local governments. The risk that the issuer will not fulfill the obligation for the principal or interest owed on the security, necessitated the introduction of adequate control" (Šabović, 2009, p. 65). To adequately protect himself from risk, "an investor should have information about the rating of a particular security." The bond rating system is used for such information (Lekić & Vapa-Tankosić, 2017, p. 511). The bond rating system has four levels. The first rating is marked with the letter A, the second rating with the letter B, the third

rating with the letter C, and the fourth rating with the letter D. In practice, there are two bond rating systems and they are marked with different letters. These are a) "Moodys" bond rating system, marked with the letters Aaa, Baa, and Caa, and b) "Standard & Poors" rating system, marked with the letters AAA, BBB, CCC, D" (Šabović, 2009, p. 65). Table 2 presents the rating of the bond system.

Table 2. Bond system rating

	"Moodys"	**"S&P"**	**Meaning**
1	Aaa	AAA	Bonds of the best quality. It offers the lowest level of placement risk. Publishers are extremely stable and reliable.
2	Aa	AA	Bonds of high quality by all standards. Slightly higher degree of riskiness of long-term placement.
3	A	A	Bonds with favorable placement attributes.
4	Baa	BBB	Bonds with a medium level of quality. Security is currently adequate, but may be unrealistic in the long term.
5	Ba	BB	Bonds with speculative elements. Moderate payment security. It is insufficiently protected.
6	B	B	The bond cannot be considered desirable for purchase. It has short-term payment security.
7	Caa	CCC	Bonds in weak condition. Issuers may be unable to pay or at risk of default.
8	Ca	CC	The bonds are of highly speculative quality. They are often unable to fulfill their obligations.
9	C	C	Bonds are the lowest rated. They have poor prospects for fulfilling the payment obligation.
10	-	D	Impossibility of fulfilling the payment obligation.

Source: Šabović, Š. (2009). Upravljanje rizikom hartija od vrednosti [Securities risk management]. Ekonomski pogledi, 11 (3), p. 66.

5. Legal treatment of securities in the Republic of Serbia

In addition to the definition stated in the introductory part of the paper, the Law of Obligations (1978) regulates other important issues related to securities.

According to Article 235, "the security must contain the following essential ingredients: 1) designation of the type of security; 2) the company, that is, the name and headquarters, that is, the name and residence of the

issuer of the security; 3) the company, that is, the name or name of the person to whom, that is, on whose order the security is issued, or the indication that the security is issued to the bearer; 4) correctly marked obligation of the issuer arising from the security; 5) place and date of issuance of the security, and in the case of those issued in series, its serial number; 6) signature of the issuer of the securities, i.e. a facsimile of the signature of the issuer of the securities issued in the series".

Article 236 stipulates that "a security may be issued to the bearer, in the name or by order", while Article 237 stipulates that "the obligation arising from the security arises at the moment when the issuer hands over the security to its beneficiary".

In addition to the aforementioned issues, the Law of Obligations (1978) also regulates the exercise of rights, the transfer of securities, changes in securities, as well as the fulfillment of obligations arising from securities.

6. Significance and economic function of securities

Securities "have enormous importance in every society in which the commodity-money market is organized. Throughout the world, there is a constant tendency to increase the importance of securities due to increasingly complex relationships due to the constant increase in values found in commodity-money circulation" (Ristić et al., 2013, p. 158).

Originally, the economic function of securities "was related to finding non-cash forms of payment and exchange functions, i.e. maintaining the constancy of purchasing power in certain values, regardless of the monetary and currency differences that exist in certain countries" (Carić et al., 2016, p. 308). These payment functions "are very important functions that are performed through securities in the modern economy. The payment function of securities is very complex and multifaceted, and because of this, in legal theory, they are broken down and demarcated into a larger number of independent economic functions" (Carić et al., 2016, p. 308).

Securities are extremely important instruments for the "mobilization of free, available funds. "In this respect, the securities are the whole world. Securities have special functions in the area of monetary and credit policy and protection of liquidity in the economy. With the help of securities, the needs of the economy in terms of mutual payments can be met without additional new emissions, which, if not controlled, can often be the focus of inflationary tendencies" (Ristić et al., 2013, p. 159).

Securities are instruments "that satisfy various credit functions because they are simultaneously very important credit instruments, and in connection with mutual credit relations, also extremely important security instruments. "In this area of commodity circulation, securities are also of particular importance because they ensure commodity circulation without the physical presence of goods on the market and in this way affect the temporal and business balancing of supply and demand of certain types of goods on certain markets" (Carić et al., 2016, p. 309).

7. Conclusion

Globalization of markets and internationalization of trade significantly affect regional and national ways of doing business, economic trends, economic balances, as well as competitive positions on the world market of knowledge and capital.

Business operations of subjects due to globalization, deregulation, and expansive development of information and communication technologies have gone through a developmental path from the traditional concept of business to modern ways of the commodity-money framework of business (with the primary goal of preserving its competitive positions and expanding its business activities to new areas by expanding already existing influence in current operations).

Securities have great importance in business. In the professional literature, there are big differences in the understanding of the concept of securities. A much higher degree of unity in understanding exists when determining certain properties of securities. Theory and practice agree that the issuance of securities represents a significant social and economic event, both locally and regionally, as well as globally.

Bearing in mind the topic of the paper, the subheadings analyzed the basic issues related to securities – the concept and essential features of securities, the legal nature and types of securities, the creditworthiness of securities, the legal treatment of securities in the Republic of Serbia, as well as the importance and economic function of securities.

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ZNAČAJ I PRIVREDNE FUNKCIJE HARTIJA OD VREDNOSTI

REZIME: Globalizacija tržišta i internacionalizacija trgovine u značajnoj meri utiču na regionalne i nacionalne načine poslovanja, privredna kretanja, ekonomske bilanse, kao i na konkurentske pozicije na svetskom tržištu znanja i kapitala. Hartije od vrednosti imaju veliki značaj u poslovanju. Teorija i praksa se pri tome slažu da emitovanje hartija od vrednosti predstavlja značajno društveno-ekonomsko dešavanje, kako na lokalnom, tako i na regionalnom, kao i na svetskom nivou. Imajući u vidu temu rada analiziramo osnovna pitanja u vezi sa hartijama od vrednosti – pojam i bitne osobine hartija od vrednosti, pravnu prirodu i vrste hartija od vrednosti, bonitet hartija od vrednosti, zakonski tretman hartija od vrednosti u Republici Srbiji, kao i značaj i privrednu funkciju hartija od vrednosti.

***Ključne reči**: hartije od vrednosti, finanasijska tržišta, privredno poslovanje, Zakon o obligacionim odnosima, Republika Srbija.*

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STATE-LEGAL FOUNDATION OF MEDIEVAL SERBIA IN THE PROVISIONS OF DUŠAN'S CODE

ABSTRACT: This paper represents a synthesis of knowledge acquired by the author through studying Dušan's Code. It analyzes the provisions reflecting the state-forming ambitions of Emperor Dušan. Considering the fact that he was aware of the size and strength of his state, which was legally grounded, the Code had to meet the Emperor's expectations. The critics of his authoritarian rule cannot deny that he had purposefully limited his own (legal) power. Thereby, the legislative technique being used was fully in the spirit of the time and space in which the Code was to be applied. Therefore, it is the author's intention to point out the provisions of Dušan's Code in which the original sources of Serbian statehood could be traced back. The issue of originality of Dušan's Code will be discussed contextually regarding the content of certain regulations. This is hindered by the fact that Dušan's Code was transcribed over twenty times, and the contents of those transcriptions were not fully identical. Therefore, the originality of the provisions in Dušan's Code should also be evaluated in relation to its previous legal monuments.

Keywords: *Dušan's Code, principles, punishment, discrimination, the Middle Ages, Serbia.*

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1. Introduction

The foundation and the development of Serbian medieval state were primarily studied through the lens of historical science. These studies based their knowledge on referential sources that allowed for a realistic overview of all circumstances preceding the foundation of a country. Of course, the political situation was specific and had crucial impact on other aspects of government functioning in a certain time and space. Such approach is visible even when studying the foundation and the development of medieval Serbia. In this context, an effort was made to determine the connection of various circumstances necessary for the foundation of the first Serbian state and its subsequent functioning. The aforementioned circumstances were an important criterion in the periodization of Serbian history, especially for the span of time prior to the Ottoman rule in the Balkans.

A complete familiarization with the character of medieval Serbia, its political, military, cultural and other aspects is not possible without determining the basis of its laws. Written legal monuments and records of their contemporaries that show traditional regulations in force, the majority of whom were church dignitaries, play a crucial role in this. In the catalogue of legal monuments, the most significant and the most deserving position belongs to Dušan's Code. The fact that Serbian state was the most powerful during this period serves as additional confirmation for this argument. However, Dušan's Code should not be seen as an isolated legal document, considering it contained and applied other legal documents, especially those preceding it being written. Those documents were not Serbian in source, but they made up an important segment of Serbian statehood through their application. In fact, they completed the legal segment of medieval Serbia, and were crucial to its functioning. In fact, the importance of the historical role of certain legal documents should be seen in this aspect, meaning, from the modern perspective, thus viewing them as legal monuments in the period prior to the ascension of Emperor Dušan. We can point out *Syntagma Canonum* by Matthew Blastares and Code of Justinian.

Considering the diversity of the articles in Dušan's Code regulating various segments of social and everyday life, we will focus on the norms protecting the state and its authority. Their sources and authenticity needs to be aged according to earlier legal monuments. Thereby, it is challenging to legally measure the real influence of Serbian common law, written legal documents and Byzantine law on the content of the articles and the extent of which the aforementioned sources shaped the spirit of Dušan's Code.

It receives the epithet of the founding legal document of medieval Serbia precisely based on the provisions regulating the basic postulates and principles of state governing, its bodies of authority and the ruler as the furthest point of their application. The self-limiting character of Dušan's power is present precisely in these provisions of his Code, which is an additional motive for their further study. Finally, historical and legally profiled term 'Dušan's legislature', originated from Florinski in 1888, and serves as a signal that the statehood of the provisions in Dušan's code is partially connected with the provisions of earlier legal monuments, such as *Syntagma Canonum* by Matthew Blastares and the Code of Justinian.

2. Historical and societal circumstances in (before) Dušan's Serbia

The foundation and the development of medieval Serbia was marked by societal turmoil. This was, in great measure, caused by the relationships with neighboring countries that had territorial disagreements with the newly-formed Serbian state. In parallel, the first inequalities began to emerge in Serbian society as a result of those particular tendencies. The differences relate to property, political convictions, national and religious differences, as well as other specificities in people who collectively influenced normal functioning of medieval Serbia.

Friction among rulers that often ended with open war of Serbian kings contributed to the stagnation of Serbian society, and created a particular management system in dealing with foreign enemies. By fighting for power amongst them, Serbian rulers often found allies in the countries that had territorial ambitions towards the very country being so unsuccessfully governed. However, during the reign of Stefan Nemanja, the first crowned king, Serbia became a kingdom with independent Church. Such individuality of Serbian state and Church set the foundations for future political ambitions of its rulers. Due to the efforts of Stefan and Sava, a symbiosis of state and church authority was established, which places them among the dignitaries of their time (Ćorović, 1997, p. 110).

The situation in Serbia prior to Emperor Dušan taking the throne was marked by its specific relationship with Byzantium. What followed were changing periods of good and bad relationship that greatly depended on the ability of Serbian rulers to stay clear of Byzantine aspirations. An important moment is the renewal of Byzantium in 1261, which revived certain conflicting sentiments towards Serbia. Serbian rulers became a part of anti-Byzantine

coalitions and political alliances. Such political tendencies are related to King Milutin, who contributed to greater identification of the Serbian people in the relationship with Byzantium. In the context of newer Serbian-Byzantine relationship, Byzantine territories were conquered by Serbia and thus, it expanded its territory into the traditionally held Byzantine areas. However, in the first half of the 14th century, there was a period of political and social disintegration of Byzantium, which benefited the strengthening of medieval Serbia. The aforementioned circumstances in the foreign political scene contributed to Serbia strengthening its presence in Byzantium during the age of King Milutin (Maksimović, 2007, pp. 372-373).

Internally, medieval Serbia showed certain weaknesses exhibited by visible animosity amongst Serbian nobles. In their mind, here was no place for central government authority to which they would (un)willingly submit. This has shown to be one of the main obstacles to further strengthening of the state and its foreign positioning. However, the crowning of Stefan Dušan has led to far more regulated relations within medieval Serbia and a period of general societal flourishing began. The fact that Serbia kept its historical legacy did not prevent Emperor Dušan to improve Serbian society based on the model of developed societies of other European countries (Joksić, 2015, p. 195).

3. The establishment of Dušan's reign and his codification

Medieval Serbia flourished when Stefan Dušan came to power. He was a ruler who came to power at just the right time, when establishing an authoritative leadership of state was evidently necessary. We purposefully use the term authoritative and not authoritarian, since, regardless of the fact that his manner of governing was strict and cruel, Stefan Dušan based his rule on personal relationship with his subjects. He primarily inspired awe with the population due to the strength of his personality and physical appearance. Such characteristics of Stefan Dušan were crucial to the manners of governing, maintaining and reordering the state government. Thereby, Emperor Dušan created suitable conditions for better army organization, which served as a backbone of his rulership. Time has shown that many centuries later, the desire for territorial expansion and the liberation of Serbian population from Austrian and Turkish rule had also required the formation of well-armed and modern military (Terzić, 2018, p. 45). The aforementioned testifies to the importance of good military organization. Considering he was aware of this fact, Emperor Dušan made substantial efforts to strengthen the military management system by putting it into legal framework.

The particularity of Dušan's reign can be seen in the new direction of his foreign policy, particularly towards the neighboring countries. The first years of Dušan's reign were marked by interchanging periods of war and tentative peace. He exhibited his ambitions through two, equally important levels of state governing: political and legal. There is a general impression that he achieved this by modeling his government after the Byzantine system of government. This can be seen, among other things, through his visible efforts to expand his throne to Serbs and Greeks.[1]

a) Emperor Dušan achieved his political ambitions by going on (successful) conquest campaigns. These successes have made the most significant contribution to the idea of imperial Serbia. Emperor Dušan demonstrated his arrogance in leading the state by establishing unlimited authority. The Emperor's pride and uncompromising rule reached as far as to secure the hereditary title of the Roman-Byzantine Empire for himself. By following his ambitions, he signed his name in Greek charters as autocrat of Serbia and Romania (Ferjančić-Ćirković, 2005, p. 56). He achieved his political ambitions by being crowned as Emperor in 1346 in Skopje. Aware that the title of the Emperor can be given by the church patriarch, Emperor Dušan elevated Serbian church from archbishopric to patriarchate. The Archbishop of Ohrid, the Bulgarian Patriarch, the Prot of Mt. Athos as well as abbots of monasteries on Mt. Athos were present at his crowning. Emperor Dušan's political abilities can be seen through his establishment of a type of state camaraderie with Byzantium, led by John Kantakouzenos. However, as all political alliances, it changed and grew into open hostility resulting in a new political friendship between Emperor Dušan and John V.

b) Legal ambitions of Emperor Dušan grew and matured alongside his successes in running the state. He was aware that a strong and powerful country, as was the case with the Roman Empire, is not possible without sound legal foundation. Therefore, he engaged in substantial legislative activity. This was preceded by the specific legal situation

[1] By working on the fulfillment of his ideas and guided by practical needs, Emperor Dušan met all expectations in both form and content. He gradually grew closer to Byzantium, meaning to conquer it by doing so. Extensive reforms that included all segments were done in order to improve Serbian society.
Emperor Dušan gave his officials the titles of despot, sebastokrator and kaisar in the areas conquered from Byzantium. They were Serbs who had familial connections with the royal family (Blagojević, 2000, pp. 52-53).

of medieval Serbia that incorporated traditions, charters, international contracts, and Serbian and Byzantine ordinances. Additionally, traditional rules rest on unwritten social behaviors, rooted in tradition and morality. On the other hand, charters are merciful acts granting certain rights by the emperor, which can *stricto sensu* be realized within the limitations of the emperor's will. International contracts regulate trade relations with Dubrovnik and the Republic of Venice.

Serbian and Byzantine regulations applied in medieval Serbia were the predecessors to Dušan's Code. An important position in the catalogue of Serbian legal regulations during the Middle Ages belongs to *Saint Sava's Nomocanon*, known as *Zakonopravilo*. The Code is a set of related legal norms, taken from *Nomocanon* and Byzantine law, and represents a symbiosis of secular and ecclesiastic rules. Their origins should be viewed in the context of earlier (secular and ecclesiastic) regulations applied in this legal area. Saint Sava based his work on *Zakonopravilo* on the following sources: 1) Nomocanon (50 titles); 2) Nomocanon (14 titles) – Nomocanon of Photius; 3) Interpretation of Aristinos and Zonaras; (4) translation of the *Proheiron* – City Law. Zakonopravilo was transcribed twelve times, which speaks in favor of the importance of this legal monument in medieval Serbia. Wishing to preserve the original authenticity of *Zakonopravilo*, Saint Sava ordered the transcriptions to be done from the original. That was the reason why later transcribers did not alter the integral text of *Zakonopravilo*.

An important legal document that first preceded Dušan's Code and later became incorporated in the Codex in shortened form was *Syntagma Canonum* by Matthew Blastares from 1335. It is important to point out that the so called shortened *Syntagma* is included in Dušan's Code and it excluded Byzantine and ecclesiastic rules. The shortening of the original text of *Syntagma* reduced its original 303 sections to current 94. Dušan's Code includes the translation of a compilation of Byzantine laws made up of 33 articles, taken from Byzantine Farmer's Law. This document is called the Code of Justinian in our literature. These were the circumstances in the time when Emperor Dušan promulgated his Code in 1349, which was supplemented in 1354 in Serres. All manuscripts of the Code, at least in the first version, are forwarded by the shortened *Syntagma* (of Matthew Blastares) and the Code of Justinian (Fajfrić, 1999, pp. 69-70).

In its articles, *Dušan's Code* regulates various segments of religious and state matters. It attempts to improve the existing system of regulations by clearly defining the relationship of church and state. It contains solutions that

he deemed the most expedient in a moment when Serbia reached a significantly stronger and favorable position in relation to neighboring countries.

4. Division of power in Dušan's code

Dušan's Code belongs in a group of modern European criminal codices. It contains basic postulates of governing based on the unity of religious and secular authority. Their relationship is based on determining full legal protection granting the freedom of religion, church officials, which must not be a cover for interfering with state matters. The significance of Dušan's Code can be seen in establishing legal framework regarding the division of authority into secular and ecclesiastic, and within the state authority it specifies the authorizations and responsibilities of its bodies.[2]

A) Regulating church authority in Dušan's Code

Church matters in Dušan's Code are regulated by a large number of articles. They clearly determine various segments and relations within the Church. The significance of the Church and the Christian Orthodox faith for the people and court can be concluded based on the fact that the initial provisions in Dušan's Code are dedicated to this matter (Article 1-37). They incriminate various actions that bring into question the practice and unity of Orthodox faith. The furthest application of these provisions is focused on the population that deviates from the traditional confession of the Orthodox faith and on church officials that sin against the religious code. This is testified by the provision of Article 4 (*On Spiritual Matters*) that originally states the following: "And in spiritual matter, every man shall show submission and obedience to his archpriest. And if any person be found committing a sin against the Church, or transgressing against any rule of this Law willingly or unwillingly, such a one shall yield and submit himself to the Church. If he disobey and evade the discipline of the Church and be not willing to follow the orders of the Church, he shall be excommunicated."

Any form of sinning against the Orthodox Christian faith involving any form of heresy is separately incriminated in Dušan's Code. The aforementioned

[2] It is interesting to note that the ruling power in medieval Serbia was not exclusive the performance of legal or judicial functions. It recognized other authorities, such as the Church, and at the same time allowed other forms of government. So, for example, the nobility and the Church, independent cities, independent foreign organizations, all had their judiciary. State judiciary dealt with activities outside of the separate courts (Taranovski, 2002, p. 520).

is confirmed by provision of Article 6 (Regarding Latin heresy): "Christians, who have turned to the use of unleavened bread, shall return to the Christian observance. If any fail to obey and do not return to Christian Orthodoxy, let him be punished as is written in the Code of the Holy Fathers."[3]

The preceding articles determine the framework of forbidden religious activity of the Orthodox. So, Article 10 (On Heretic) states: "And if any heretic be found to live among the Christians, let him be branded on the face and driven forth, and whoever shall harbor him, let him too be branded." This provision clearly forbids heresy in Orthodoxy. In nomo-technical sense, articles 6-10 of Dušan's Code are related to Latin heresy. It is evident that Emperor Dušan felt the greatest danger is the Orthodox embracing Catholic faith. Judging by this, other possibilities of heretical actions did not exist. Therefore, evident definition of the term and meaning of heresy is not evident, as it was exclusively related to one faith – Roman Catholicism, meaning Latin heresy (Čvorović, 2018, p. 26).

The provisions regulating the position of the Church can also be found in other parts of Dušan's Code. They regulate the following matters: relations amongst nobility and the Church (Article 47), social status of clergy (Article 65), the manner of passing judgment in litigation regarding land belonging to the Church (Article 78), the relationship between the army and the Church in certain situations (Article 130), the manner of collecting fines within the Church, where it renounces the interference of imperial authority (Article 194), prohibition against spending the night in a Church, apart from the Empress and the Queen[4] (Article 195), prohibition of cutting hair as punishment for men and women without the approval of the Bishop (Article 196). The aforementioned provisions show a substantial manner of regulating the relationship between the Church and the Emperor, particularly in relations to the judicial power of the Church. "Judiciary power of the Church in medieval Serbia had, in fact, indirect authority. The Church passed arbitration for the priesthood as court regulating a social class, for all those of the Orthodox faith for criminal actions against faith and in certain civil matters, but also for all inhabitants of church or monastery properties (Metohija) as patrimonial court. Patrimonial

[3] This paragraph uses the Greek term *azimstvo*, which refers to the differences in the ritual of communion between the Catholics and the Orthodox. As opposed to the Orthodox, Catholics use unleavened bread for communion (Bubalo, 2010, p. 151).

[4] As a reminder, the wife of Emperor Dušan, Empress Jelena was the only woman who had the right to stay on Mt. Athos. She visited the Holy Mountain in 1348. Following the historical thread of the time when Dušan's Code was written (1349) and its subsequent annexation (1354), we could state that this move of the Empress was subsequently legalized in the provision of Article 195 of the Code.

church court had exclusive authority over the people belonging to the Church (peasantry) and other inhabitants of church and monastery properties. The Church, as feudal lordship, had the judicial authority over all men under its jurisdiction (Stojanović, 2022, pp. 5-6).

B) Regulating state authority in Dušan's Code

State authority in Dušan's Code is regulated by a large number of provisions. They regulate various matters regarding the activity of judges, imperial authority and the manner of acting in certain situation that were considered particularly dangerous at that time. Based on the stylization of the provisions regulating the activity of the judges and the courts, we can see that resolve of the imperial army in allowing the courts to act completely independently. The provision of Article 171 of the Code (On the Law) states: "Imperial order: If the Tsar write a writ either from anger or from love, or by grace for someone, and that writ transgress the Code, and be not according to justice and the law, as written in the Law, the judges shall not believe that writ, but shall only judge and act according to justice." Emperor Dušan places the decision of the Emperor under the legal authority of the Code, which further shows the importance of making legal and right decisions. In this case, the provisions of the Code have more legal validity and should be used by the judges to make decisions. Furthermore, in the provision of Article 172 of the Code (On Judges), he decidedly states the following: "All judges shall judge according to the law, rightly, as is written in the Code, and shall not judge out of fear of the Tsar." Here, Emperor Dušan purposefully *de iure* rejects the possibility of interfering in the work of courts and the decisions of judges. The division of state authority is legalized in this manner and a line is drawn between them, which prevents interference.[5]

Starting from the historical fact that every authoritarian government narrows its executive branch, thus creating a funnel of power and influence,

[5] In that sense, we can state without exaggeration that the foundations of modern European Serbia were made in medieval Serbia of Dušan's time. These foundations were used to build modern European political and legal thought in the center of which is the division of legal independence of the state authority. In similar manner, by highlighting the importance and the content of Rousseau's (enlightening) and political thought, framed by Constant's (Benjamin Constant de Rebecque) temporal and political distance, Terzić concludes: "Historical memory, found at the root of Rousseau's belief, has shown that the accumulation of power had always occurred in the hands of one man or a group of men. That is why, in that age, no thought was given to the possibility of accumulation of enormous power in the hands of precisely those who opposed unlimited authority – the majority" (Terzić, 2016, p. 49)

then this, in fact, shows the extent of which imperial Serbia belonged to a group of modern states of its time. This is why the argument of a certain number of foreign and domestic scholars dealing with historical and political debate that Emperor Dušan was an autocrat who was cruel in his dealing with his subjects does not stand. Protić, for example, places Emperor Dušan in the framework of humanity and divinity, believing that he is somewhere between the two (Protić, 1986, p. 194). Eminent literary persons discussed the personality and rulership of Emperor Dušan in this light, as well as the situation in this capital city – Prizren.[6]

By accepting the importance of eliminating corruption and other forms of legally inappropriate actions of judges, Emperor Dušan clearly introduced prohibitions that eliminate such possibilities in the Code.[7] His resolve to deal with the potentially corrupt actions of judges, Emperor Dušan stated in the provision of Article 110 of the Code (On Judges): "A judge travelling anywhere across imperial lands and his own area, shall not be authorized to take a meal by force, nor anything else save gifts given him by someone of their free will." Aware of the possibility that a judge 'earns' honor from other people, Emperor Dušan allows for the judge to receive symbolic gifts, but draws a clear line in how far such behavior can be tolerated. Judging by the situation of the time, symbolic gifts could be a jug of good wine or spirit, but in no case can it be money or other valuable item with evident monetary value (gold, jewelry, etc.). Apart from that, any form of public shaming of judges and their honor was strictly forbidden (Article 111 of the Code). This further ensures the conditions necessary to perform judicial duty.

There is a provision present in Dušan's Code that guarantees the legal validity of a judicial decision, meaning a solution in litigation against thieves and brigands. It cannot be refuted or changed by the will of the Emperor, the

[6] "In the vision of Prizren by Dučić, it is refined and welcoming, a noisy and classy city: *All day long the sunny bells are ringing, Prizren opened all its city doors*. In Serbian folk and literary poetry, imperial Prizren was a very complex symbol. It is a city of culture and legacy, and Dušan is his living *promoter and initiator of change*. Dušan's culture, power and humanity will also inspire Desanka Maksimović to have a dialogue regarding his Code in a collection of poems *I seek amnesty,* where she reconstructs the values of Dušan's time through a scientific and humanitarian lens. The absolute poet seeks amnesty for all, even the Emperor himself. The continuity of discussion with Emperor Dušan and regarding Dušan extends from oral epic poetry, through modern poetry, until today" (Đorđević, 2011, pp. 69-70).

[7] It is our opinion that Emperor Dušan found the political and legal inspiration for the fight against corruption in previous emperors. By considering the causes of the fall of the Roman Empire, historians listed corruption as one of the main reasons. It appears that Emperor Dušan was partially instructed by the Roman experience, so he attempted to eliminate this option by providing adequate legislation.

Church or the nobility (Article 148 of the Code). All judicial documents must be neatly kept, thus ensuring their validity (Article 163 of the Code). The specificity of judicial duty is seen in the provision of Article 175 of the Code (On Judges), which states as following: "The judge who is in the court of the Tsar, when any evil occur, let him pass judgment. If the litigants happen to be in the court of the Tsar, let the court judge pass judgment on them, and no one shall be summoned to the court of the Tsar outside the competence of the judges appointed by the Tsar, but let everyone go before his one judge."

Respecting judicial decisions starting from the summons until the final legal resolve to the litigation is ensured by mandatory actions of the prefects and the lords. Otherwise, they will also been seen as insubordinate and be placed in the category of persons who do not honor judicial decisions (Article 178 of the Code). However, the Code allows for a person whom was inflicted with great injustice to seek justice in the Emperor's court. These are truly rare situations, when the damaged party could not achieve justice and his interest in regular court manner.[8]

However, the independence of judiciary in Dušan's Code is severely jeopardized, and thus brings into question the aforementioned, in the provisions that proscribe the possibility of final legal outcome of certain litigation. In these cases, the Emperor was a kind of source of appellation that would give the final resolution. There was no refuting of the Emperor's will after that. This is testified by the provision of Article 181 of the Code (On litigation before the Emperor): "Imperial order to the judges: If there be a weighty case and they cannot decide it and pass judgment, however great the court may be, let one of the judges go with both litigants before the Tsar. And whatever the judges shall wish to try, let them write down each judgement, that there be no mistake, that it be proceeded according to the Law of the Tsar." In this manner, the Emperor distances himself from litigating in cases led by regular judges. They have the so called original, or as understood today, primary jurisdiction, while Emperor's authority is seen exclusively in the final resolution of the matter. This is explicitly stated in the provision of Article 183 (On Shepherds): "The shepherds of the Tsar shall go before the judges when they have disputes among themselves: for fines, for brigandage, for theft, for harboring alien people, for murder, for land."

[8] This legal option did not have a general meaning, but it was applied only when the damaged party was free men. Slaves and serfs not allowed to participate in these situations, as they were denied this option in Dušan's Code.

The aforementioned provisions provide enough grounds for the opinion that Dušan's Code, in the sphere of litigation, is a legal successor of resolutions from Byzantine law. In that spirit, Solovjev based his conclusions regarding the position and independence of judicial authority in Dušan's time by pointing to the solutions present in the provisions of his Code. He believes that the legal understanding that the ruler has the right to personally pass judgment in any litigation is in force. That is why the ruler represents supreme judicial authority and is addressed by 'regular' courts to notify him of litigation and to ask for resolutions. According to this, and similarly to Byzantine law, the Emperor can 'pass' any judgement where he has the role of appellate jurisdiction (Solovjev, 1998, pp. 241-242). Furthermore, Emperor Dušan ensured himself the legal exclusivity in passing judgement in three cases – on treason, on murder and on kidnapping of a noblewoman where the perpetrators are litigated before the Emperor (Article 192 of the Code).[9]

A system of trial by jury was introduced in medieval Serbia dating back from the time of King Milutin. Dušan's Code confirms trial by jury in provisions of Articles 151-154. Serbian jury consisted of 24, 12 or 6 jurors, provided by both parties in equal number. Following the official oaths, the litigation was resolved by a majority vote. However, the jurors were not the court, but a means of evidence crucial for the judge's decision (Solovjev, 1998, p. 242).[10]

The necessity of complete regulation of state authority can be seen in the section related to the ruler himself. Namely, the Emperor is authorized to prevent any form of obstruction of the lords and prefects during detention of convicted persons. In favor of this is the provision of Article 184 of the code (On Prefects): "Lord and prefects of the Tsar who hold the towns and market-towns, none of them may imprison a man without a writ of the Tsar. If any such do receive him without the command of the Tsar, let him pay five hundred perpers." The following Article 185 of the Code (On Prison) that amends the previous article in a concise manner states: "In the same way, he who holds the

[9] It is interesting to note that Emperor Dušan titles this provision *On True Court*, which additionally adds to the hypothesis of it being the supreme judicial instance.

[10] The literature on this topic debates whether in the litigation involving Saxons there was the possibility of them proposing jurors from their groups. According to Jireček's interpretation of Article 123 of the Code in case of litigation between a noble Orthodox Serb and a Saxon Roman-Catholic, nowhere does it state that half of the jurors would have to consist of Serbs and half of Saxons, but instead that half of the jury would be formed of people that belonged in the same social class as the lord, while the other half of persons that share the social status of the Saxon. According to one interpretation, listed by Katančević, Dušan's Code did not allow for the Saxons in dispute with Serbs to have the right to half of the judges or jurors (Katančević, 2015, p. 114).

prisons of the Tsar shall receive no one, nobody's man, without a writ of the Tsar." Namely, Dušan's Code apostrophizes the emperor, as a body of central and supreme power, who has the legal authority to litigate in all segments.[11]

Within the scope of the discussion on substantial provisions of Dušan's Code, particularly ones regulating state authority, there is an issue where this codex is a constitution in the material sense. Taking from the stance of the doctrine that we can view constitution in the formal and material sense, we can state that Dušan's Code is a legal act *sui generis*. It contains norms regulating the organization and the authority and supreme state bodies as well as the principles of the entire legal order. In this manner, the Code regulates the functioning of the state founded on Byzantine state and legal order. As a result, valuing the opinion of Lukić, an academic in this field, in terms of determining the material aspect of the constitution, Dušan's Code can be considered a constitution in the material sense (Đurđev, 2000, p. 215).

5. The state as an instrument of "unequal" right to punishment *(ius cogens)*

The right to state sanctioned punishment (*ius cogens*) is a basic feature of Dušan's Code. In a manner of speaking, punishment is the purpose of its existence. The provisions in Dušan's Code are centered on a specific and cruel form of punishment towards those who defy the articles of the emperor's Codex. *Lato sensu* a large number of provisions is dedicated to criminal law, where, among other things, we find the innovated term of guilt (*sinning*). This includes transgressions against government norms and moral commandments, which are also aimed against divine law in Byzantine legal systems.

The system of punishments and their execution is taken from Byzantine law, except the punishment of castration. What distinguishes Dušan's Code is the evident discriminatory manner in treating the lower and higher social classes. Namely, different punishments are proscribed for the same offense for those belonging to different social classes. Among others, this can be seen in the provision of Article 94 (On Homicide): "If a lord kill a commoner in a town, or in a district, or in a summer pasture hut, he shall pay one thousand

[11] As a reminder, Dušan's Code proscribes two bodies of supreme authority: the Emperor and the State Assembly. Therefore, "the inhabitants of the cities did not enter the composition of state assemblies, as a kind of class assemblies, which existed in the monarchies of western Europe" (Šarkić, 2011, p. 19).

perpers. But if a commoner kill a lord, both his hands shall be cut off and he shall pay 300 perpers." Dušan's Code makes a certain step in the right direction compared with the more advanced Byzantine law by gradually transitioning to one legal type of punishment. So, for example, the fines proscribed for those committing lighter criminal offenses are paid to the state rather than to the damaged party as was the case prior to this (Joksić, 2019, pp. 40-41).

The death penalty was relatively common in medieval Serbia. The manner of execution contributed to the terrifying character of the death penalty. The catalogue containing the ways the penalty could be done contains: stoning, throwing off a cliff, hanging, burning, decapitation, dismemberment, strangulation. We can find various methods of execution in Dušan's Code. The provision of Article 95 of the Code (On Insult) proscribes the following: "Whoso insults a bishop, or a monk, or priest, shall pay 100 perpers. Whoso be found to have killed a bishop, or a monk, or priest, let him be killed and hanged." When punishing bandits and thieves, it is proscribed for them to be blinded first, and then hanged (Article 149 of the Code). A somewhat different manner of execution is provided in Article 96 of the Code (On Homicide): "Whose be found to have killed his father, or mother, or brother, or his own child, let that murderer be burnt in the fire."

Many kinds of corporal punishments that are executed in a cruel manner are proscribed in medieval Serbia. Using the classification of medieval corporal punishments on those that disfigure the culprit and on those that only inflict pain, we can point out the following corporal punishments: cutting off hands and feet, cutting off noses, cutting off ears, ripping and cutting off the tongue, removing the eyes, blinding, beating of hands and legs, beating, putting in chains, branding (Joksić, 2015, pp. 200-201).

Dušan's Code contains several cases for which a corporal punishment could be used against the culprit. Mutilating the culprit (by cutting off hands and nose, extracting the eyes, etc.) was a common way of punishment for various offenses. So, for example, the provision of Article 88 (On Intentional Murder) proscribes the following corporal punishment: "Whoever commits homicide without intention and violence, let him pay 300 perpers. If a man kill intentionally, both his hands shall be cut off." Corporal punishment was applicable even with persons whom, from the viewpoint of modern legislature, committed an offense with necessary accessory. This is seen in Article 54 of the Code () that proscribes the following: "If a noblewoman commit fornication with her man, let the hands of both be cut off and their noses slit." Such manner of punishment is, in great measure, the specificity of Dušan's Code, and it became recognizable based on this in Serbian legal history.

6. Conclusion

Serbia built its statehood on the division of various eras dominated by the aspirations of conquest in its neighbors. In such circumstances, it is necessary to distinguish a catalogue of known legal monuments that frame its state and legal foundation. Emperor Dušan achieved the glory of a statesman and the halo of a strict ruler through his wise and moderate politics. These were the foundations upon which the Serbian Empire was established spanning vast territories, which today include several countries.

Enormous military and state successes of Emperor Dušan were accompanied by active codification. It was crowned by the promulgation of Dušan's Code, a legal symbol of medieval Serbia. It contains provisions regulating an entire catalogue of state matters. *Prima facie* we can take note of advanced legal technique seen through conditional stylization of legal provisions. The system of government authority is stated quite clearly, in accordance with the time and the legislative spirit of medieval understanding.

The specificity of Dušan's Code can be seen in the fact that the Code could be considered a constitution of medieval Serbia. Thereby, this is in regards to the material understanding of constitution, which is (not) identical to its formal definition. The provisions of Dušan's Code ensure the state the right to proscribe punishments (*ius cogens*). However, on the state and legal scene, we have a system of selective justice that provides far greater protection to those belonging to higher social classes, while being much harsher towards the lower classes.

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DRŽAVNO-PRAVNO UTEMELJENJE SRPSKE SREDNJOVEKOVNE DRŽAVE U ODREDBAMA DUŠANOVOG ZAKONIKA

REZIME: Rad predstavlja sintezu saznanja do kojih je autor došao proučavajući Dušanov zakonik. Analiziraju se odredbe u kojima se ispoljavaju državotvorne ambicije cara Dušana. Budući da je bio svestan

veličine i snage države, koja ima svoje pravno izvorište, Zakonik je morao ispuniti careva očekivanja. Kritičari njegove autoritarne vlasti ne mogu osporavati da je ciljano (pravno) ograničio sopstvenu vlast. Pritom je legislativna tehnika bila potpuno u duhu prostora i vremena u kome se Zakonik trebao primenjivati. Zato je namera autora da ukaže na odredbe Dušanovog zakonika u kojima se mogu prepoznati originalni izvori srpske državnosti. Pitanje originalnosti Dušanovog zakonika biće razmotreno u kontekstu sadržaja određenih odredbi. Na tom putu stoje činjenice da je Dušanov zakonik doživeo preko 20 prepisa čiji sadržaji nisu u potpunosti podudarni. Stoga, originalnost odredbi Dušanovog zakonika treba ceniti i u odnosu na njemu prethodeće pravne spomenike.

Ključne reči: *Dušanov zakonik, načela, kažnjavanje, diskriminacija, srednji vek, Srbija.*

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THE MINORS AS VICTIMS IN A CRIMINAL PROCEEDINGS FOR CRIMINAL OFFENSES AGAINST SEXUAL FREEDOM[1]

ABSTRACT: It is undeniable that the minors represent a particularly sensitive group of the modern society. Criminal acts have a particularly hard impact on the minors, especially children. For this reason, the domestic legislator almost always incriminates an act committed against a minor and/or a child as the most serious or heaviest form of a criminal act. However, in addition to prescribing special, more serious forms of criminal offenses when they are directed against a minor, and in addition to punishing such offenses much more severely, the domestic legislator also intervenes from another angle, guided by the best interest of a child as an absolute imperative, so he prescribes special rules under which the minors can participate in a criminal proceedings for criminal acts directed against them. This paper, starting from the general rules on the position of the injured party, provides an overview of the special rules referring to the minors as the injured parties.

Keywords: *minors; criminal proceedings; victims.*

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1. Introductory Notes on the Damaged as a Subject of Criminal Procedure

From a historical point of view, the position of the injured party in the past was considerably less favorable than it is today because the rights and interests of the injured party were not taken into account. However, with the development of criminal procedural law, the interests of the injured party are considered more carefully and seriously, because the state, including the court, is obliged to provide the injured party with appropriate protection of material and moral interests, which is why his active participation in the criminal proceedings is enabled.

At the end of the sixties of the twentieth century, Professor Packer presented his theoretical conception of *crime control* and *due process* modality of criminal proceedings (Packer, 1968, p. 159 et seq.; for more details see: Stefanović, 2017, pp. 34-36), he did not dedicated to the procedural position that the victim of a criminal offense has in the criminal proceedings for that offense, which seems unusual if one takes into account that in the sixties of the 20th century, a movement for the protection of victims' rights began, which was supposed to shed more light on the experiences and protection of victims in criminal proceedings (Trumbull, 2008, p. 780 et seq.).

The absence of the victim from the aforementioned theoretical models is explained by the conflict that would arise between the interests of the victim, on the one hand, and the public prosecutor's interest in effective prosecution within the framework of *crime control* model, or defense rights within the *due process* model, on the other hand (Beloof, 1999, p. 299). As a result, the concept of *victim participation* model of criminal procedure was theoretically shaped, which is based on fairness to the victim, her respect and respect for her dignity (Masahiko, 2010, p. 149). The origin of this concept was significantly contributed by victimological ideas about the rights of victims, under the influence of which there were gradual changes in national criminal legislation, both materially and procedurally (Reynald, 2004, pp. 519-520).

The increased attention paid to this issue in comparative criminal law is also a consequence of the influence of universal and regional international human rights documents. Of these, the International Covenant on Civil and Political Rights and, in particular, the European Convention for the Protection of Human Rights and Fundamental Freedoms should be mentioned (Ilić, 2012, p. 139). The importance of the European Convention on Human Rights is reflected in the fact that states, in terms of the protection of basic human

rights, in addition to the basic duty of ensuring the right to life by establishing certain criminal legislation, also have a positive obligation to take preventive measures to protect an individual whose physical integrity or life is threatened other people's criminal behavior (Jakšić, 2006, p. 89 et seq.).

Although our criminal procedural legislation adopts the term injured party, it must be noted that the term victim itself is used more often in relevant international documents, comparative law and foreign literature (Ilić, 2012, p. 140).[2]

In the light of the above stated, this paper deals with some issues of the general position of minors as victims in criminal proceedings, and points out certain similarities and differences in the position of minors in relation to the general position of victims in domestic criminal proceedings. In addition to the above, a separate chapter of the paper is dedicated to special measures and legal consequences of conviction against the perpetrators of crimes against sexual freedom committed against minors, and with which our legislator tried to prevent the commission of these crimes.

The aim of the paper is to provide an overview of the position of minors in criminal proceedings, and to highlight certain issues concerning the positive legal measures that the legislator has adopted in order to prevent and specifically punish these crimes, and a proposal is made so that the future legislator could change and improve the existing solutions.

[2] The question can be raised whether there is a basis for adopting this term in our law as well. Although in the procedural theory there were attempts to make a conceptual difference between the victim (*la victime)* and the *injured party – le lésé*), there is still a lot of vagueness in this regard, which is a consequence of the inconsistency of the authors of various international legal documents that refer to the position of the victim in criminal proceedings. Ilić (2010, p. 78) uses property that has been damaged by a criminal act as a basis for differentiation. Accordingly, Ilić points out, the concept of victim would include a person whose personal rights were violated by a criminal act, while the concept of injured party would be related to the violation of property rights. This position, in principle, can be accepted as correct, but it should not be viewed narrowly only from the property aspect. Broadly speaking, in our opinion, anyone who is in any way affected by the commission of a criminal offense can be considered a victim of that criminal offense, while the term "injured party" implies a criminal procedural status which, as a rule, is conditioned by the existence of a certain legal qualification. Certainly, we are of the opinion that this terminological meaning has no practical consequences, bearing in mind that the legislator, as a rule, opts for only one of these two terms, while in our region these terms are often used as synonyms. Certainly, we can state that the term "victim" is primarily related to criminal substantive law and criminology, while the term "injured party" is mainly related to the procedural subject, that is, to criminal procedural law.

2. General Remarks on the Position of the Victim in Criminal Proceedings in the Republic of Serbia

While the previous Code of Criminal Procedure did not specifically define the injured party, but rather it was considered a matter of fact, according to the provisions of Article 2, paragraph 1, item 11 of the "new" Code of Criminal Procedure from 2011, the injured person should be understood as a "person whose personal or property rights were violated or threatened by a criminal act". By adopting the new Code of Criminal Procedure, the Republic of Serbia has fulfilled the assumed obligation of the state to provide special rules on the protection of witnesses in certain criminal proceedings depending on the category of witnesses, the category of criminal acts or the category of courts (Brkić, 2005, p. 125). Therefore, in order for a person to be characterized as a victim, two conditions must be met: the first is that a criminal offense was committed, and the second is that, during the commission of that criminal offense, some personal or property right was violated or endangered. Both conditions must be cumulatively met (Stefanović, 2017, p. 44).

Following the general trend at the international level, and in our positive criminal procedural legislation, the victim gets an increasingly important role in criminal proceedings, and the provisions of the new Code of Criminal Procedure confirm such a conclusion (Lukić, 2011, p. 161).

Regarding the status of the injured party, in criminal proceedings the injured party may have different characteristics. Therefore, the injured party can appear in the criminal proceedings in different procedural roles: 1) as a private prosecutor (in the case of criminal acts for which he is prosecuted under a private criminal lawsuit); 2) the injured party as a prosecutor (for criminal offenses that are prosecuted ex officio in cases where the injured party took over the prosecution from the public prosecutor); 3) the injured party as a subject of pressure on the public prosecutor to initiate or continue criminal prosecution; 4) with a proposal for criminal prosecution; 5) with a proposal for the realization of a property claim arising from the commission of a criminal offense and 6) as a witness (Bejatović, 2016, p. 176; See more Stefanović, 2017, pp. 45-85, Matijašević-Obradović, 2016, pp. 153-179).

In order to realize its features, that is, to achieve the purpose of the defendant's participation in criminal proceedings, the injured party has the rights that are exhaustively listed in Article 50 paragraph 1 of the Code of Criminal Procedure. Thus, the injured party has the right to: "1) submit a proposal and evidence for the realization of a property claim and to propose temporary measures for securing it; 2) point out the facts and propose

evidence that is important for the subject that's being proved; 3) engages a representative from the ranks of lawyers; 4) examines files and inspects items that serve as evidence; 5) be notified of the rejection of the criminal complaint or of the public prosecutor's withdrawal from criminal prosecution; 6) file an objection against the public prosecutor's decision not to undertake or to abandon criminal prosecution; 7) be instructed on the possibility of taking over the criminal prosecution and representing the prosecution; 8) attends the preparatory hearing; 9) attends the main trial and participates in the presentation of evidence; 10) file an appeal against the decision on the costs of criminal proceedings and the awarded property claim; 11) be informed about the outcome of the procedure and be served with a final judgment; 12) takes other actions when determined by this Code."

The participation of the injured party in the procedure is evidenced by the possibility that, in the case of "lighter" crimes, the criminal charge may be dismissed if the damage has been fully compensated (Code of Criminal Procedure, 2011, art. 284, paragraph 3), or the criminal prosecution may be postponed in order to compensate for the damage caused or to fulfill due maintenance obligations. (Code of Criminal Procedure, 2011, Art. 283 para. 1 items 1 and 4 (Ilić, 2010, p. 153). Ilić points out that a statement of the defendant's acceptance to fulfill one of the obligations contained in Art. 283 st. 1 of the Code of Criminal Procedure, with the fact that its execution can begin even before submitting the agreement to the court, provided that the nature of the obligation allows it (Code of Criminal Procedure, 2011, Art. 314, paragraph 2, point). A key step forward is the obligation of the court to award the property claim in whole or in part in the conviction or in the decision on the imposition of a security measure of mandatory psychiatric treatment, and refer the injured party to civil proceedings for the excess (Code of Criminal Procedure, 2011, article 258 paragraph 4).[3] The injured party's right to file an appeal against the decision on the awarded property claim is in accordance with the practice of the European Court of Human Rights in

[3] The above-mentioned legal provision foresees an exceptional referral to the injured party to pursue the property claim in its entirety in litigation, provided that the data of the criminal proceedings do not provide a reliable basis for either a full or partial adjudication of the claim. However, no matter how much the legal provision talks about exceptional reference to litigation, in practice, it is generally known, the situation is reversed. As a rule, the criminal court will refer the injured party to litigation, while it will only exceptionally decide on a property claim. The reasons for this behavior of the criminal courts, we believe, lie partly in the insufficient skill of the judges of the criminal court in compensation law (lack of knowledge of court practice, etc.), but also in the personal views of the judges of the criminal court that they do not need to decide on issues that, according to their by nature itself, litigation issues, i.e. issues from the domain of civil (private) law. For different views, see: Stefanović (2017, p. 205 et seq.).

Strasbourg, according to which the injured party cannot be required to, after the property claim has been asserted in criminal proceedings and a certain period of time has passed since the disputed event, before the civil court demands compensation for damages (Ilić, 2012, p. 154),[4] and only denying the opportunity to the injured party to file an appeal against the first-instance court decision would constitute a violation of the right to access the court in the sense of Article 6 of the European Convention on Human Rights.

Ilić (2012, p. 154) points out that if the rights that belong to the injured party as a prosecutor or a private prosecutor from Articles 58 and 64 of the Code of Criminal Procedure are added to what has been exposed, it can be concluded that the injured party, depending on his procedural role, has significant procedural possibilities at his disposal, which leads certain writers to the conclusion that in this way (by introducing "prosecutorial" powers of the injured party) the position of the defense is weakened, that is, the equality of arms is violated. This position, in our opinion, can be criticized. Namely, when the injured party acts as an authorized prosecutor, either in a private lawsuit or as a subsidiary prosecutor, he does not have any new or special powers that are not otherwise available to the public prosecutor when he acts as an authorized prosecutor, nor are these prosecutorial powers characterized by special quality when used by the injured party. Quite the opposite. In practice, private prosecutors and subsidiary prosecutors never have the same effective prosecutorial powers as public prosecutors do, because the prosecuting authorities (police and public prosecutor's office) are still, unfortunately, not inclined to assist private prosecutors and subsidiary prosecutors in representing their charges. On the other hand, when the injured party participates in the criminal proceedings along with the public prosecutor, he again has prosecutorial powers in a narrower scope than those of the public prosecutor. In addition, the public prosecutor and the injured party, as a rule, come forward with a joint approach. Therefore, in our opinion, we cannot speak of a violation of the equality of arms by enabling the injured party to participate more actively in the criminal proceedings. The weapons remain the same. And the fact that both the public prosecutor and the injured party are on the opposite side may favor the defendant's position, depending on the defense strategy.

[4] See in particular the decision of the European Court of Human Rights in the case of *Boris Stojanovski v. the former Yugoslav Republic of Macedonia* , May 6, 2010, § 56.

3. The Position of a Minor as a Vicim in Criminal Proceedings in Domestic Legislation

Following the trends set by international legal standards[5] regarding the position of minors in criminal proceedings, and taking into account the inherently sensitive position, the domestic legislator envisages special rules relating to minors appearing in criminal proceedings – this area is also called juvenile criminal law in theory (Škulić, 2003, p. 368).

Juvenile criminal law can be defined as a separate, rounded and autonomous area that contains a number of specific solutions in relation to adult perpetrators of criminal acts, and which represents legal regulations that determine the criminal legal status of minors (Jovašević, 2008, p. 466). It is, therefore, an area of the law that is based on the personality of the perpetrator (Dragojlović & Matijašević, 2013, p. 48), so it can be said that juvenile criminal law exceeds the framework of criminal law because it includes not only criminal law provisions of substantive legal content, but also provisions of procedural and executive criminal law to the extent and in scope that refers to minor perpetrators of criminal acts.

The Law on Juvenile Perpetrators of Criminal Offenses and Criminal Protection of Minors appears as the main regulation that contains criminal material and procedural provisions on the position of minors in criminal proceedings.

The Law on Juvenile Perpetrators of Criminal Offenses and Criminal Protection of Minors (hereinafter referred to as the Law on Minors) entered into force on January 1, 2006. In this way, juvenile criminal law was formally separated from the Criminal Code, that is, the Code of Criminal Procedure and the Law on Execution of Criminal Sanctions. Today, in the Republic of Serbia, the Law on Minors is the basic, direct source of juvenile criminal law, which, as a special regulation, has primacy in application to juvenile perpetrators of criminal acts, and under certain legal conditions also to adults (Jovašević, 2008, p. 468). In this sense, it is indisputable that the Law on Minors is *lex specialis* in relation to the Code of Criminal Procedure, while the provisions of the Code of Criminal Procedure, as well as other regulations in the field of criminal law, according to Article 4 of the Law on Minors, are applied subsidiarily to those issues that remain outside the regulations of the Law on Minors, i.e. they will be applied when they do not contradict the provisions of the Law on Minors.

[5] For a detailed description, see: Jovašević, 2008, 475 et seq.; Vojinović, 2019, p. 28 and further.

Before presenting individual legal solutions that regulate the position of minors as victims in criminal proceedings, it should be pointed out, as a general note, that the current Law on Minors is not in full agreement with the provisions of the new Code on Criminal Procedure, and there are certain essential and terminological deviations, which is a consequence of the fact that the new Code on Criminal Procedure was adopted much later than the Law on Minors. However, the legislator should have made the necessary corrections in the special law, so that the entire criminal procedural law of the country would represent a rounded and coherent system.

In the first place, defining the scope of application of this law in a personal sense, and respecting international standards in this matter, Article 3 of the Law on Minors defines which persons are considered minors and to what extent this law applies to them. Thus, according to the introductory provisions of this law, a person who has "reached the age of fourteen at the time of the commission of the criminal act, but has not reached the age of eighteen, is considered a minor." The Law on Minors also recognizes the division into younger minors, who have reached the age of fourteen at the time of the commission of the criminal act, but have not reached the age of sixteen, and older minors who are between the ages of sixteen and eighteen at the time of the commission of the criminal act. As a special category, minors are mentioned, that is, persons who have reached the age of eighteen at the time of the commission of the criminal act, but have not reached the age of twenty-one at the time of the trial.

However, these legal provisions from Article 3 do not refer to minors in all procedural roles, but refer to the age of the *perpetrator*. However, in the third part of the Law on Minors, which contains special provisions on the protection of minors as victims in criminal proceedings, no distinction is made between minors of different ages, and there is no division into victims as children, older and younger minors and younger adult persons, so it can be taken as the authoritative prescription of the Criminal Code, according to which a minor is considered a person who has not reached the age of eighteen (similarly, Jovašević, 2008). This conclusion is the only legally possible one. However, we believe that it is not entirely correct. Namely, children, younger and older minors do not suffer the consequences of a criminal offense equally. By its very nature, this is not possible. It is quite expected and reasonable that an act will hit a minor of a certain age much harder, while it will hit a minor of an older age somewhat more mildly. The legislator must have been aware of this, and should, in our opinion, have left room for stronger or more adequate protection of minors at a more sensitive age.

The provisions of the third part of the Law on Minors, which refers to the protection of minors injured by a criminal offense in criminal proceedings, among other things, stipulates that the panel will try adult perpetrators of certain criminal offenses prescribed by the Criminal Code, if the injured party in the criminal proceedings is a minor. The judge who presides over the aforementioned panel must be a judge who has acquired special knowledge in the field of children's rights and the criminal protection of minors (See more: Marković & Spaić, 2021, pp. 149–150). The following crimes are in question: aggravated murder (Article 114), incitement of suicide and assisting suicide (Art. 119), grievous bodily harm (Art. 121), kidnapping (Art. 134), rape (Art. 178), rape against a helpless person (Art. 179), adultery with a child (Art. 180), adultery by abuse of position (Art. 181), illicit sexual acts (Art. 182), pimping and enabling sexual intercourse (Article 183), organization of prostitution (Art. 184), display of pornographic material and exploitation of children for pornography (Art. 185), extramarital union with a minor (Art. 190), taking of a minor (Art. 191), change of family status (Art. 192), abandonment and abuse of a minor (Art. 193); domestic violence (Art. 194), failure to provide support (Art. 195), incest (Art. 197), armed robbery (Art. 205), larceny (Art. 206), extortion (Art. 214), facilitating the consumption of intoxicating drugs (Art. 247), war crimes against the civilian population (Art. 372), human trafficking (Art. 388), trafficking in children for adoption (Art. 389), establishing a slave relationship and transporting persons in a slave relationship (Art. 390).

However, this kind of prescription is somewhat imprecise, and this impreciseness is reflected in the fact that the legislator only states "if the victim in the criminal proceedings is a minor", and therefore it is unclear whether this provision applies to a person who is a minor at the time the commission of a criminal offense or a person who is a minor at the time of the criminal proceedings, and amendments to the law should also resolve and specify this issue (Knežević, 2010, p. 325). When conducting proceedings for criminal acts committed to the detriment of minors, all persons participating in the proceedings, especially the public prosecutor and judges in the panel, shall treat the injured party with particular care, while taking into account his age, personality characteristics, education and the circumstances in which lives, and all in order to prevent possible harmful consequences of the procedure on his personality and development (Škulić, 2009, p. 56). The legal possibility that eases the situation of minors is that the evidence collected in criminal proceedings can be used in civil proceedings, thus speeding up the course of the proceedings and reducing the costs of the proceedings. Such a legal solution means that in civil proceedings the minor would not have to be heard

again before the court and thus prevents the repeated feeling of discomfort and fear that minors may have during interrogation. If the criminal proceedings were legally concluded with a conviction before the civil proceedings, the civil proceedings would not have to discuss issues that have already been discussed in the criminal proceedings, because in accordance with the provisions of Art. 13 of the Law on Civil Procedure, in civil proceedings the court with regard to the existence of a criminal offense and the criminal responsibility of the perpetrator is bound by the final judgment of the criminal court declaring the accused guilty. The principle of immediacy stipulates that the evidence is presented immediately before the court. In order to protect a minor, it would be expedient for the panel acting in the civil procedure to request the consent of the parties that the evidence presented in the criminal procedure that was not legally concluded with a conviction should not be presented again, but should be read at the main hearing, which is a deviation from the general rule of criminal proceedings on the direct presentation of evidence. The provisions of Article 102 of the Code of Criminal Procedure stipulate that the procedural body is obliged to protect the victim or witness from insults, threats and any other attack, and in the event that someone violates this prohibition, the procedural body is authorized to impose a fine. The provisions of the Code of Criminal Procedure protect the injured minor in another way by providing for special procedural protection, namely Article 103, which regulates the status of a particularly sensitive witness, and which provides that a "witness who, due to age, life experience, lifestyle, gender, state of health, nature, manner or consequences of an enforceable criminal offense, i.e. other circumstances of the case that are particularly sensitive, the procedural authority may ex officio, at the request of the parties or the witness himself, determine the status of a particularly sensitive witness." The decision on determining the status of a particularly sensitive witness is made by the public prosecutor, the president of the panel or a single judge in the form of a decision. A separate appeal is not allowed against the decision by which the request was accepted or rejected.

In this way, the Code of Criminal Procedure, as *lex generali* in relation to the Law on Minors, provides similar protection, because it regulates the rules on the examination of a particularly sensitive witness so that questions can only be asked to a particularly sensitive witness through the procedural authorities, who will treat him with special respect and attention, trying to avoid the possible harmful consequences of the criminal procedure for the personality, physical and mental state of the witness, and further states that the examination can be carried out with the help of a psychologist, social worker or other expert, which is decided by the authority of the procedure.

The provisions of the Code of Criminal Procedure provide for the possibility that the authority of the procedure decides to examine a particularly sensitive witness using technical means for the transmission of images and sound, the examination is conducted without the presence of the parties and other participants in the procedure in the room where the witness is located, and that it can be to interrogate a particularly sensitive witness in his apartment or another room, that is, in an authorized institution that is professionally qualified for the examination of particularly sensitive persons. Such solutions provided by the Code of Criminal Procedure are identical to the provisions of the Law on Minors, with the difference being that the provisions of the Law on Minors applies only to minors, and the provisions of the Code of Criminal Procedure also to other groups of sensitive witnesses. A particularly sensitive witness cannot be confronted with the defendant, unless the defendant himself requests it, and the procedural authority allows it, taking into account the degree of sensitivity of the witness and the rights of the defense. According to the provisions of the Law on Minors, it is certainly forbidden for minors to confront the defendant, regardless of whether the defendant requests it or not. Therefore, it can be concluded from the above that the new Code of Criminal Procedure for the protection of sensitive and especially sensitive witnesses was inspired by the provisions of the Law on Minors.

In particular, it should be noted that, in accordance with the provisions of Article 157 of the Law on Minors, criminal proceedings for criminal offenses from Article 150 of this law are urgent. This provision is particularly important in order to shorten the period of uncertainty, fear and discomfort experienced by a minor injured person.

The position of minors as victims of criminal offenses is also regulated by special laws from different areas, in the effort of the domestic legislator to prevent the commission of criminal offenses against minors and, in the case of a committed criminal offense against a minor, to improve the position of that person as a victim in criminal proceedings . These laws are, by the nature of the matter they regulate, special laws.

One of such special laws is the Law on Special Measures for the Prevention of Criminal Offenses Against Sexual Freedom of Minors, which entered into force in April 2013 (hereinafter: Law on Special Measures). The Law on Special Measures is one of the shorter legal texts, with a total of 19 relatively short articles.

According to Article 1 of this Law, "this Law prescribes special measures to be implemented against perpetrators of crimes against sexual freedom committed against minors specified in this Law and regulates the keeping of

special records of persons convicted of those crimes", while this Law for its purpose, according to Article 2, "the conditions that may have an influence on the perpetrators of criminal acts against sexual freedom committed against minors to commit these acts in the future have to be eliminated."

As decisive reasons for the adoption of this law, the proponent (Government of the Republic of Serbia) points out that Article 37 of the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse, which was ratified by the National Assembly in May 2010, obliges the member states of this convention to prevent and prosecution of criminal offenses established in accordance with this convention, take all necessary legislative or other measures to collect data related to the identity and genetic profile (DNA) of persons convicted of criminal offenses established in accordance with this convention. In addition, bearing in mind the increased number of crimes against sexual freedom committed against minors, it is necessary that, in addition to the existing system of criminal sanctions, which have not been fully proven to be effective, special measures should be introduced to eliminate the conditions that can be from the influence that the perpetrators of these criminal acts commit these acts in the future. For the aforementioned reasons, it is proposed to adopt a special law that would prescribe additional measures to be implemented against persons convicted of crimes against sexual freedom committed against minors, after serving a prison sentence, and also to establish a special criminal record for these convicted persons. This Law is limited in its application to only certain criminal acts which, by nature of the *numerus clausus* norm, are listed in Article 3 of this Law. These are 1) rape (Article 178, paragraphs 3 and 4 of the Criminal Code); 2) rape of an incapacitated person (Article 179, paragraphs 2 and 3 of the Criminal Code); 3) adultery with a child (Article 180 of the Criminal Code); 4) fraud by abuse of position (Article 181 of the Criminal Code); 5) illicit sexual acts (Article 182 of the Criminal Code); 6) pimping and facilitating sexual intercourse (Article 183 of the Criminal Code); 7) organization of prostitution (Article 184, paragraph 2 of the Criminal Code); 8) showing, obtaining and possessing pornographic material and exploiting a minor for pornography (Article 185 of the Criminal Code); 9) inducing a minor to attend sexual acts (Article 185a of the Criminal Code); 10) using a computer network or communication by other technical means to commit crimes against sexual freedom against minors (Article 185b of the Criminal Code).

However, the provisions of the Law on Special Measures will not be automatically applied to all perpetrators of the criminal acts listed in Article 3 of this law. In order for the provisions of this law to be applied, it is necessary

that the qualifying circumstance be fulfilled during the commission of the criminal act: that the act was committed against a minor, that is, that a minor was harmed by a criminal act (Article 3 of the Law on Special Measures).[6]

The key operational provisions of this law are contained in Articles 6 and 7.

Thus, Article 6 of the Law on Special Measures regulates the legal consequences of a conviction.[7] Namely, a conviction for a criminal offense specified in Article 3 of this law necessarily entails the following legal consequences:

1) termination of public office,
2) termination of employment, i.e. termination of calling or profession related to work with minors,
3) prohibition of acquiring public positions,
4) prohibition of establishing an employment relationship, i.e. performing a calling or occupation related to work with minors.

Furthermore, according to paragraph 2 of this provision, the legal consequences of the conviction from paragraph 1 of this article occur on the day the judgment becomes final. Regarding the duration of these legal consequences of a conviction, it is prescribed that the legal consequences of a conviction from paragraph 1 point 3) and 4) of this law last for 20 years, and, according to an express provision, the time spent serving a prison sentence is not included in the duration of the legal consequences of a conviction. The legally binding judgment from paragraph 2 of this article must also be delivered to the convicted person's employer.

Therefore, a clear conclusion can be drawn that with regard to points 3 and 4, i.e. the ban on acquiring public positions and the ban on establishing an employment relationship, i.e. performing a calling or occupation related to working with minors, their duration is precisely determined in advance to a duration of 20 years, and there is no possibility of a shorter duration of these

[6] At this point, it should be noted that on several occasions since 2012, various representatives of the National Assembly of the Republic of Serbia have initiated a procedure for the adoption of a law on amendments to the Law on Special Measures, so that it does not only apply to minors, but to applies to all persons, i.e. that the provisions of this law apply to all perpetrators of the criminal acts listed in Article 3 of the LSM, regardless of whether they were committed against a minor or not. (See available proposals for amending the Law on the website of the National Assembly of the Republic of Serbia – www.parlament.gov.rs); These proposals of MPs did not enter the parliamentary procedure.

[7] These legal consequences of conviction for criminal offenses against minors occur independently of the legal consequences of conviction provided for in the Criminal Code.

legal consequences of conviction in these cases. This type of prescription can only be justified from the aspect of the legislator's effort to be particularly punitive. However, looking at it from the aspect of criminal sanctioning, setting a fixed duration of legal consequences in advance and for such a long period of time, cannot be fully accepted. This is all the more so since this law includes truly diverse acts, where we can imagine a situation where it would not be justified to set the legal consequences of a conviction, in any case not for a duration of 20 years. However, the legislator completely tied the hands of the court, that is, the legal consequence of the conviction occurs without the possibility of the court, taking into account the special circumstances of the case, to decide that this consequence does not occur, or that it lasts for a shorter duration of 20 years. All the more so since this duration is twice as long as the time period prescribed by the Criminal Code.

Regarding the other legal consequences of the conviction, no particular criticisms can be directed at the legislator. On the contrary, the legislator was reasonable and measured when prescribing these consequences of conviction.

Furthermore, Article 7 of the Law on Special Measures provides for special measures imposed on convicted persons, which represent the main motive for the adoption of this special law. Thus, according to the perpetrator of the criminal offense referred to in Article 3 of this law, *after serving the prison sentence*, the following special measures are implemented:

1) mandatory reporting to the competent authority of the police and the Administration for the Execution of Criminal Sanctions,
2) prohibition of visiting places where minors gather (kindergartens, schools, etc.),
3) mandatory visit to professional counseling centers and institutions,
4) mandatory notification of change of residence, place of residence or workplace,
5) mandatory notification of travel abroad.

Paragraph 2 of the same article prescribes that the measures from paragraph 1 of this article shall be implemented 20 years after the prison sentence has been served, and paragraph 3, that after the expiration of every four years from the beginning of the application of the special measures from paragraph 1 of this article, the court that issued the first-instance verdict, *ex officio* decides on the need for their further implementation. A request for reconsideration of the need for further implementation of special measures from paragraph 1 of this article can be submitted by the person to whom these measures apply, and the request can be submitted to the court that issued the

first-instance verdict after the expiration of every two years from the beginning of the application of special measures.

According to the explanation for the adoption of the Law on Special Measures, bearing in mind the goal of the Law prescribed in Article 2, which is to eliminate the conditions that may have an influence on the perpetrators of criminal acts against sexual freedom committed against minors in the future committing these acts, Article 7 of the Law provides are special measures that are implemented after serving a prison sentence (Draft, 2012, p. 8).

Of the prescribed measures, we believe that each would pass the constitutionality muster, even though they violate human rights to a certain extent – freedom of movement, first of all. Namely, we believe that the prescribed measures really limit the human right to freedom, which includes freedom of movement, both in the sense of the European Convention on Human Rights and in the sense of the Constitution of the Republic of Serbia. It is not disputed that, in terms of the "balance test" applied by the Strasbourg Court, the restriction in question is based on law and serves a legitimate state objective. The only element that could be disputed is the fulfillment of the conditions "necessary in a democratic society" – that is, the requirement that there is a balance between the goal that the state wants to achieve and the means by which it is achieved, that is, the measure that limits human rights. This is because the duration of special measures of 20 years after serving a prison sentence can, at first glance, seem like an unreasonably long period of time. Then it could be argued that the state went too deep into the right of a convicted person to freedom. However, the duration of the special measure is only nominally set at 20 years. Namely, this is due to the fact that paragraphs 3 and 4 of the same article prescribe that the court ex officio decides every 4 years on the need for further implementation of these measures. In addition, it is possible for the person to whom the measures refer to, every two years, to submit a request to the court to decide on the further need to implement special measures. Therefore, if the competent court effectively and really pays attention to the examination and decision on the need for further implementation of special measures, without it being reduced to the automatic extension of special measures, then the state has ensured a fair conduct of the proceedings, and there is no *prima facie* disproportion. Therefore, although one could argue the opposite, these measures cannot be considered unconstitutional.

However, as a general criticism, it should be stated that the legislator almost completely tied the court's hands. There is no possibility of assessment and discretion of the court when deciding, all legal consequences of conviction and all special measures occur and are applied by force of law. As much as half

of the legal consequences of a conviction last for 20 years without exception or possibility of shortening. The court cannot decide that only some legal consequences of a conviction should occur or that only some special measures be applied. All special measures nominally last 20 years, unless the court shortens the measure every four years. In doing so, the legislator predicted that the court will decide *ex officio* on the need for further implementation of special measures, while not prescribing a single element that the court should take into account, so that the court is completely free to decide on the basis of whatever criteria you want. On the one hand, the legislator completely submits the matter to the court's discretion (determination of special measures and legal consequences of the conviction), while on the other hand, he leaves all discretion to decide on the need for further implementation of measures. This approach of the legislator is inconsistent and opens the door to the complete arbitrariness of the court.

In addition, the inadequacy of the abstract and linear sanctioning of all perpetrators of the aforementioned criminal acts, apart from elementary unfairness, is also problematic due to the nature of the acts themselves. Thus, on a hypothetical example, which is quite present in practice, we can see the problem of such prescription. Namely, if two persons, one aged 13 and one aged 16, are in a love relationship and consummate the same relationship, this would further mean that, with the strict application of the Criminal Code and the Law on Special Measures (which does not make a difference in the application of measures and of the legal consequences of the conviction against the age of the perpetrator), that person had to be convicted of adultery with a child, with all the legal consequences of the conviction and special measures. No discretion of the court could be exercised (except for the deliberate reclassification of the act). This was certainly not the intention of the legislator, but with clumsy formulations and complete exclusion of the freedom of the court, this situation is completely possible.[8] In addition, according to the express provisions of Article 5 of the Law on Special Measures, for criminal offenses from Article 3 of this law, the sentence cannot be reduced and parole is not possible (see in detail on this issue Đorđević & Simeunović-Patić, 2015, p. 239 and further).

[8] The case of the High Court in Pancevo, which convicted a person, a member of the Roma national minority, for having sex with a child is well known, so that the Court of Appeal in Belgrade, with the president of the panel, Miodrag Majić, changed the first-instance verdict and acquitted the defendant.

In addition, in Articles 13-15 of the Law on Special Measures, it is stipulated that the Ministry responsible for judicial affairs keeps special records on persons convicted of criminal offenses from Article 3 of the Law.[9] This is a *de facto* registry of sex offenders against minors.

We can therefore say that the legislator started from valid reasons, with the right motive when enacting this legal regulation, but he had to be wiser in his prescription. However, as shown by the constant attempts to amend this law, and especially as pointed out in the proposal of MP Nenad Konstatinović from September 2016, there are many problems with the non-application of this legal regulation in practice, starting with the (non) keeping of the register from Article 13 Law on Special Measures, by failing to apply special measures and legal consequences of conviction and others.

4. Conclusion

As one of the most sensitive social groups in modern society, minors require and enjoy special protection in all proceedings in which they participate and which concern them. Thus, minors are especially protected when they appear as injured persons in criminal proceedings. A special position primarily refers to the rules on hearing and questioning an injured minor, which fundamentally recognizes the status of a sensitive witness. Our legislator followed the standards set by international legal documents, thus fulfilling his assumed obligations. However, the Law on Juvenile Offenders and Criminal Protection of Minors is not perfect. Namely, we believe that it would be necessary to further elaborate the third part of this law, which refers to the protection of minors as injured persons, in order to foresee new and extend existing protections for these persons, and that the level of protection of minors as injured persons differs according to the age of that person. Thus, this chapter would be harmonized with the rules of the same law that exist when it comes to juveniles.

On the other hand, with regard to the Law on Special Measures, we believe that it should undergo significant substantive changes. Although the legislator started from a valid goal of regulation, also respecting international

[9] It is interesting to point out the clumsiness in formulating the legal provision from Article 13 of the LSM. Namely, this article refers only to those persons "convicted of a criminal offense" from Article 3 of that law. It is not clear whether this provision includes insane persons, who were not convicted of a criminal offense, but of an offense defined by the criminal law as a criminal offense, and were sentenced to mandatory psychiatric treatment. If we know that these persons are not guilty of these acts, the question arises whether they fall under the determination of the legislator in the sense of Article 13 of the LSM.

standards, we believe that he went too far, so this law is of a highly punitive nature. *De lege ferenda* , it would be necessary to leave the possibility for the court, according to the circumstances of each specific case, to apply one or more measures at the same time, and not for them to be automatically applied simultaneously. Also, greater autonomy should be given to the court when determining the legal consequences of a conviction, as well as their duration, as well as the duration of special measures. The legislator would be justified in prescribing the minimum and maximum duration of the legal consequences of conviction and special measures, where the court, *in concreto* , would determine the exact duration of these sanctions. However, in the first place, it would be necessary to start applying the existing law in its entirety. It's not like it was enacted way back in 2013.

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MALOLETNA LICA KAO OŠTEĆENI U KRIVIČNOM POSTUPKU ZA KRIVIČNA DELA PROTIV POLNE SLOBODE

REZIME: Nesporno je da maloletna lica predstavljaju naročito osetljivu grupu savremenog društva. Krivična dela naročito teško pogađaju maloletna lica, a posebno decu. Iz tog razloga domaći zakonodavac gotovo uvek kao teži ili najteži oblik nekog krivičnog dela inkriminiše delo koje je učinjeno prema maloletnom licu i/ili detetu. Međutim, pored toga što propisuje posebne, teže oblike krivičnih dela kada su ona uperena protiv maloletnog lica, te pored toga što takva dela znatno strože kažnjava, domaći zakonodavac interveniše i iz drugog ugla, te, vodeći se, kao apsolutnim imperativom, najboljim interesom deteta, propisuje posebna pravila pod kojima maloletna lica mogu da učestvuju u krivičnom postupku za krivična dela uperena protiv njih. Ovaj rad, polazeći od opštih pravila o položaju oštećenog, pruža prikaz posebnih pravila koja se odnose na maloletna lica kao oštećena.

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

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CYBERBULLYING LEGISLATION: THE ROLE OF CYBERBULLYING LAW

ABSTRACT: Faced with the increasing number of cases of cyberbullying and its consequences, states are trying to find the best way of its sanctioning. The latest tragic event, in which a young man from Republika Srpska committed suicide because he was mocked on one of the social networks, has triggered a public debate on whether cyberbullying is adequately sanctioned in our country. Based on the way individual countries sanction cyberbullying, we can divide them into two groups. The first group includes those countries that sanction cyberbullying through the application of one of the existing criminal offenses (insult, defamation, persecution, unauthorised filming, hate speech). The second one refers to those countries where cyberbullying has been treated as a special criminal offense. The aim of this paper is to make suggestions for possible changes, based on an analysis of the existing legislation on cyberbullying in our country as well as in some European countries, in order to protect the victims of cyberbullying more effectively. In the paper, the authors have used a normative-legal method for the analysis of legal regulations including a comparative method for a comparative presentation of a legal regulation of cyberbullying in other countries. On the grounds of the

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analysis conducted, there is a conclusion that a legal protection against digital violence in our country does not provide adequate remedies for the victims of cyberbullying.

Keywords: *cyberbullying, social networks, criminal law, legislation.*

1.Introduction

"The Internet is a tool with two faces:
complete freedom and a source of knowledge on the one hand,
a source of degradation and destruction on the other hand".
(Chassin, 2017).

In addition to the benefits that the Internet offers us, such as a great source of useful information and literature, electronic banking, shopping from home, working from home, the Internet can also be a tool for criminal activity and violence. The increasing number of cases of cyberbullying is also confirmed by a survey conducted in 2016 in America, which found that 34% of students were victims of cyberbullying and 12% of students admitted to having committed cyberbullying (Bostanci Bozbayindir, 2019, p. 426). Cyberbullying is increasing every year, so the numbers are much higher today than in 2016.

Today, there is no universally accepted definition of cyberbullying and most countries treat cyberbullying as one of the forms of traditional violence (insult, defamation, unauthorised filming and photographing, stalking) perpetrated on the Internet (Bostanci Bozbayindir, 2019, p. 427). "Cyberbullying is a crime that is an extension of traditional bullying. Cyberbullying takes the form of a verbal offence in cyberspace" (Syaidi & Suparno, 2022, p. 2).

The fight against cyberbullying takes place with legal and extra-legal methods. The non-legal methods are various awareness campaigns for children, staff in educational institutions and parents (Child Safety on the Internet, Stop Digital Violence, Choose Your Words, Prevent Hate), the legal methods refer to the legal sanctioning of cyberbullying. The question arises whether traditional laws are able to adequately protect victims of cyberbullying. The subject of this paper's analysis is the legal regulation of cyberbullying as a type of violence perpetrated on social networks and the Internet.

Social networks as a place where cyberbullying takes place and the large number of users who are often witnesses and participants of cyberbullying make the consequences of cyberbullying more severe for victims compared

to traditional forms of violence "...the virtual characteristic of these spaces is only an additional feature, because their consequences are felt in the physical, real world" (Bjelajac & Filipović, 2021, p. 16). Offensive pictures, videos and comments posted on the internet become accessible to a large number of people, some of whom also participate in cyberbullying by making offensive comments. The fact that posts on the internet cannot be deleted and that cyberbullying, once committed, remains on the internet forever (Filipović, 2022, p. 116), is one of the features that distinguish traditional violence from cyberbullying. The possibility of re-viewing and new comments makes cyberbullying endless, where the victim is exposed to daily humiliation as long as the material is available (Bostanci Bozbayindir, 2019, p. 430). In some countries, repetition is a constitutive element of cyberbullying, such as in the USA, while in other countries (England) repetition is not a constitutive element of cyberbullying (Bostanci Bozbayindir, 2019, p. 431). In the latest in a series of tragic cases of cyberbullying, in which a 22-year-old young man in Republika Srpska committed suicide in October this year after a video was posted taunting the public in Serbia and Republika Srpska, the cruelty of the comments individuals left under the video shocked. "They scre*ed you", "Now just kill yourself", "What an idiot you are", "Ha-ha-ha, you should kill yourself right now" (published in the newspaper Kurir, 2022a). The problem of cyberbullying as a result of the digital society is a global problem. In France, a young man committed suicide because he had to pay a certain amount of money to prevent his intimate photos from being published. According to French jurisprudence, it is a criminal offence to upload recordings and images made-created without a person's consent. If the picture or image was taken with the person's consent, no criminal proceedings can be initiated. Problematic are cases where people are blackmailed on the basis of images and videos they have sent voluntarily. Then it is only possible to initiate proceedings for incitement to suicide, and even then it is difficult to trace the people who sent the pictures or recordings, as in this case it was done from an internet café. However, in one of the cases where an image was published even though consent was given for the image, the French court considered that publishing an image with intimate content is punishable (Chassin, 2017).

2. Types and statistics of Cyberbullying

And if we talk about a type of violence that is a novelty compared to the traditional types of violence, as well as the fact that with the rapid development of technology, new types of cyberbullying can be expected (Filipović, 2022, p. 116), we can conclude, based on the research so far, that:

insults, ridicule, recording and posting of recordings and pictures, stalking, formation of hate groups, offensive comments on other people's pictures and videos are the most common forms of cyberbullying (Žunić Cicvarić & Kalajdžić, 2021, pp. 12-13). An international survey from UNICEF, which examined the rights of children and young people aged 9-17 online, found that "37% of primary school students and 66% of secondary school students have experienced digital violence, 22% of primary school students and 30% of high school students have seen or heard that their peers suffer from digital violence" (Mirković, 2019, str. 6).

Young people who use social networks witness cruel behaviour on social networks every day. ACLording to a 2011 international study, 95% of children aged 8-17 said they witness cyberbullying and ignoring others, and as many as 55% said they frequently witness cyberbullying and ignoring others. Despite the worrying data on the percentage of observers who do not respond to cyberbullying, it is encouraging that 84% of respondents said they had seen people defend a person who was being harassed or bullied, and 27% said they saw this often. Worryingly, 21% of respondents said they had joined in the violence. Another worrying statistic relates to parents' lack of knowledge about the extent of cyberbullying, such that only 7% of parents said they were concerned about cyberbullying, and 33% of children said they had been a victim of cyberbullying (Vasyaev & Shestak, 2020, p. 145). ACLording to data, 58.4% (4.62 billion people) of the world's population use social networks, spending an average of 2 hours and 27 minutes there. Last year alone, the number of social network users increased by 424 million new users. In Europe, the number of social network users is higher compared to the global population and stands at 85% (published in the newspaper Danas, 2022). An international survey organised by UNICEF to investigate the rights of children and young people on the internet concluded that "94% of primary school students and 99% of high school students own a mobile phone, 89% of primary school students and 92% of high school students have aCLess to the internet" (Mirković, 2019, p. 6). In Serbia, "schoolchildren spend between 3 and 4.5 hours on the internet, and between 4 and 7 hours on weekends, and 74% of children and adolescents have a profile on a social network ..., of which 72% are between 11 and 12 years old, and the same is true for children under 13" (United Nations Children's Fund – UNICEF, 2019). The large number of children who start using the internet at an early age is also evidenced by a London School survey conducted in European countries, which found that 50% of children aged 6-7 use the internet and the percentage of children using the internet aged 12-13 is 94% (Vasyaev & Shestak, 2020, p. 141).

3. Legal Consequences of Cyberbullying

In the latest of a series of tragic cases in which a young person in Republika Srpska committed suicide due to cyberbullying, the public was unhappy with the way the relevant authorities acted after the young man reported to the police that a video in which he was mocked had been circulated on the internet, posted by people who had secretly recorded it. ACLording to information that appeared in some media outlets, the prosecution said it had received information from the police that it was a hoax. In the text published in Kurir (2022b) about this tragic event and after the reaction of the public that the Prosecutor's Office did not issue an order to remove the video after the young man reported it, but that this happened after the young man had taken his own life, the Prosecutor's Office stated in its response that the criminal offence of endangering security from the Criminal Law of the Republic of Srpska could not be applied to a specific case of cyberbullying, as there were no elements for this offence. Further evidence of the inadequacy of the regulations is the fact that in its response to the allegations that it did not take the prescribed measures, the prosecution states that "the order to remove recordings from social networks is not prescribed as such at all" (Kurir, 2022b). In some countries, including the Republic of Serbia, there is a problem with initiating proceedings for cyberbullying, as it is not provided for as a separate criminal offence. Previous events have shown that criminal acts of cyberbullying are classified under the offences already provided for in the Criminal code, and such a situation often leads to victims being forced to initiate a private prosecution lawsuit for ridicule on social networks, referring to the offence of insult, and to the perpetrators being charged with the crime of unauthorised recording, for which the punishment cannot possibly be commensurate with the consequences of the offence committed, despite the fact that a person committed suicide as a result of his or her violent act. At the last event, the Association of Judges and Prosecutors of the Republic of Serbia announced an initiative calling for amending the existing criminal law and introducing a criminal offence for cyberbullying, prosecuted ex officio, "which adequately punishes the perpetrators and actors of cyberbullying, which is increasingly present" (published in Kurir, 2022c).

When analysing the application of the Criminal Code (hereinafter CC) of the Republic of Serbia to cases of cyberbullying, we must first emphasise that Article 1 of CC states that "no one can be convicted for an act that has not been determined to be a criminal offence". This is exactly the problem that the prosecutor's office in Banja Luka pointed out when it stated that it

could not apply the criminal offence of endangering security to a specific case of cyberbullying in order to give consent to the removal of the video. In the Republic of Srpska, perpetrators of cyberbullying were arrested for unauthorised recording after a young man who was the victim of their taunting on a social network committed suicide. Our legal system (Article 143 of CC) stipulates that a fine or imprisonment of three months to three years can be imposed for this offence. Unauthorised publication of recordings and images is also a common form of cyberbullying (Article 145 CC), and this also carries a fine or imprisonment of up to two years. For insult as one of the most common forms of cyberbullying (Article 170 of the CC), it is prescribed that the proceedings be initiated by a private prosecution, which further complicates the position of the victim of cyberbullying, and a fine is provided for. Comments emerged in public that violent persons should be prosecuted for the offence of inciting and assisting suicide (Article 119 of the CC). The analysis of the constituent elements of this offence suggests that perpetrators would be convicted of this offence due to its constituent elements (subordinate position of the victim in relation to the instigator). Certain forms of cyberbullying are punishable under the offence of persecution (Article 138a CC). Finally, defamation, another common form of cyberbullying, is not provided for in the Criminal Code, but the victim may invoke the Law of obligations (Article 200) when initiating proceedings for non-material damage. Cyberbullying is not the same as traditional violence and has some peculiarities, so sometimes we cannot refer to prescribed acts or we refer to acts whose sanctions the legislator would certainly not prescribe if he had in mind the consequences of cyberbullying.

4. Cyberbullying legislation comparative review

With the emergence of cyber nations, legislation is also needed to sanction cyberbullying. Based on the legislation governing cyberbullying, countries can be divided into two groups. The first group consists of countries that sanction cyberbullying through the application of one of the existing criminal offences (insult, defamation, persecution, unauthorised recording, hate speech). The second group includes those countries that have provided for cyberbullying as a separate offence, as well as more serious forms of offences, such as the case of cyberbullying due to which a person commits suicide, or aggravating circumstances considering the vulnerability of the person due to his or her age or the existence of emotional closeness between the perpetrator and the victim. In this group of countries, we can again make a division between those

that have enacted specific laws for cyberbullying against minors and those that sanction cyberbullying as a separate offence regardless of age (Bostanci Bozbayindir, 2019. p. 435).

4.1. England

The first group of countries to apply existing laws to cyberbullying includes England, where cyberbullying is not a crime in its own right. In England, depending on the type of cyberbullying, some of the four existing laws are applied to acts of cyberbullying, namely: the Protection from Harassment Act 1997; the Communications Act 2003, which makes it an offence to transmit harmful messages; the Law on Malicious Communications Act 1988; the Offences Against the Person Act 1861; the Communications Act 2003; or the Criminal Justice and Public Order Act 1994 (Franco & Ghanayim, 2019, p. 21; Bostanci Bozbayindir, 2019, p. 435).

4.2. US

The group of states that have decided to enact laws making cyberbullying a separate criminal offence in response to cyberbullying includes 49 US states (Bostanci Bozbayindir, 2019, p. 435). The state of Missouri was one of the first to define cyberbullying as a separate crime (Franco & Ghanayim, 2019, p. 25). In the US, all states except Montana have passed laws on cyberbullying that require schools to take certain measures to prevent and punish instances of cyberbullying among students. The definition of cyberbullying and the level of punishment varies from state to state. For example, in some states such as Louisiana, the penalty for cyberbullying is defined as "an act in which a text, image, or recording is transmitted electronically with the malicious intent to coerce, torment, intimidate, and injure a minor under the age of 18 and is punishable by a fine of $500 or six months in prison" (Franco & Ghanayim, 2019, p. 24). In Arkansas, cyberbullying is an offence for which the penalty is not limited to minors and is defined as "electronic communication intended to intimidate, coerce, abuse, terrorise, or harass another person" (Franco & Ghanayim, 2019, p. 25).

4.3. Austria

After it was found that Austria is the country with the highest rate of cyberbullying in the European Union, that every second child in Austria has been exposed to some form of cyberbullying and the opinion that the existing

penalties for cyberbullying (insult, defamation, harassment, stalking) did not provide the necessary protection for victims of cyberbullying, in 2016, Austria amended the Criminal Law to provide for a prison sentence of up to one year or a fine for cyberbullying for a person who "damages the reputation of another person in front of a large number of people or makes information or images of an intimate nature available to a large number of people without their consent and through a telecommunications system with the intention of causing serious harm to a person's life over a prolonged period of time" (Franco & Ghanayim, 2019, p. 23). An offence in which the victim of cyberbullying commits or attempts to commit suicide is considered a more serious form, and in this case a sentence of three years' imprisonment is provided (Franco & Ghanayim, 2019, p. 23).

4.4. Italy

Italy is one of the countries that passed a law in 2017 banning online harassment, the publication of insults and defamation, and the blackmail of minors. We conclude that in Italy, as in some states in the US, protection against cyberbullying is limited to minors by a specific law, which we cannot consider the best solution, considering that the victims of cyberbullying are often younger adults. The law in Italy "is dedicated to the first victim of cyberbullying in Italy", Carolina Picchio (14 years old), who killed herself by jumping out of a window after being abused by posting a video online showing herself drunk. This video was subsequently published on Facebook and triggered an avalanche of online abuse by her ex-boyfriend and peers. (Bostanci Bozbayindir, 2019. p. 437; Franco & Ghanayim, 2019, p. 24). Italian law provides for the right of victims of cyberbullying and their parents to demand that the website remove the offending content within 48 hours (Bostanci Bozbayindir, 2019. p. 437). The law in Italy is characterised by the fact that it does not provide for any punishment for an offence or crime committed by the person who commits cyberbullying, but only allows for the removal of texts, images or videos from the internet (Franco & Ghanayim, 2019, p. 24).

4.5. Germany

Germany is one of the countries where cyberbullying is not considered a crime in its own right, but falls under other criminal offences such as insult, stalking, violation of privacy by publishing photos, distribution of violent

videos, threats and defamation (Bostanci Bozbayindir, 2019. p. 438). In Germany, every third child between the ages of 10 and 18 has been a victim of some form of cyberbullying. This situation led the authorities to reflect on the existing legal solutions at the conference on cyberbullying. After the analysis, it was concluded that the existing Criminal Law does not sufficiently cover acts of cyberbullying, i.e. its application is not adequate, and that there is a need to adopt a law that provides for violence, i.e. its types, as a separate criminal offence that allows the victim to report the crime more easily and quickly (Bostanci Bozbayindir, 2019, p. 438). In Germany, in response to cyberbullying, existing laws have been adapted to apply to cases of cyberbullying: Penalties are also provided for offences that occur on the internet, protection against defamation on social networks and the internet has been improved, in line with the consequences suffered by the victim in terms of wide and unrestricted publicity (Franco & Ghanayim, 2019, p. 33).

5. Conclusion

In view of the increasing percentage of cyberbullying, especially among children and adolescents, the consequences of which for the victims are serious mental disorders and, in the most serious cases, even suicide, all countries have taken certain measures, both illegal and legal. In response to cyberbullying, in addition to preventive measures and campaigns highlighting the harms of cyberbullying (Keep Children Safe Online, Let us Stop Digital Violence, Choose Your Words, Prevent Hate), it is necessary to harmonise laws to sanction cyberbullying appropriately.

In response to cyberbullying, states have chosen one of the models for sanctioning cyberbullying, providing for cyberbullying as a separate criminal offence or sanctioning cyberbullying by applying existing provisions on criminal offences (libel, defamation, unauthorised recording, photography, unauthorised publication of recordings and images, etc.).

Serbia is one of the countries that have decided to sanction cyberbullying through the application of existing criminal offences. In practice, this model has proven to be insufficient, as certain forms of digital violence cannot be responded to in the right way by applying the sanctions prescribed for existing acts. Furthermore, it is necessary to consider the issue of responsibility not only for those who post comments, pictures and videos, but also for those who leave inappropriate comments, jokes or hate. The conclusion from all this is that the legal regulation of cyberbullying in Serbia is not sufficient to protect victims of cyberbullying and that it is necessary to consider adopting a law on

protection against cyberbullying that takes into account all the specific features of cyberbullying that distinguish it from ordinary, traditional violence.

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ZAKONODAVSTVO O SAJBER NASILJU: ULOGA ZAKONA O SAJBER NASILJU

REZIME: Suočene sa sve većim brojem slučajeva sajber nasilja i njegovim posledicama države pokušavaju da pronađu najbolje rešenje za njegovo sankcionisanje. Poslednji tragični događaj u kome je mladić iz Republike Srpske zbog ismejavanja na jednoj od društvenih mreža izvršio samoubistvo pokrenulo je raspravu u javnosti da li je u našoj zemlji sajber nasilje na adekvatan način sankcionisano. Na osnovu načina na koji pojedine države sankcionišu sajber nasilje možemo ih podeliti u dve grupe. U prvoj grupi su zemlje koje sajber nasilje sankcionišu primenom nekog od postojećih kaznenih dela (uvreda, kleveta, proganjanje, neovlašćeno snimanje, govor mržnje). U drugoj grupi su zemlje koje su sajber nasilje predvidele kao posebno krivično delo. Cilj rada je da se na osnovu analize postojeće zakonske regulative sajber nasilja kod nas i u pojedinim zemljama Evrope daju predlozi za eventualne izmene, a kako bi se pružila efikasnija zaštita žrtvama sajber nasilja. U radu je korišćen normativno-pravni metod za analizu pravnih propisa kao i komparativni metod za uporedni prikaz zakonskog regulisanja sajber nasilja u drugim zemljama. Na osnovu sprovedene analize zaključak je da pravna zaštita od digitalnog nasilja u našoj zemlji ne obezbeđuje adekvatne pravne lekove za žrtve sajber nasilja.

***Ključne reči**: Sajber nasilje, društvene mreže, krivični zakon, zakonodavstvo.*

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THE OPERATOR'S LIABILITY FOR COPYRIGHT VIOLATIONS COMMITTED BY USERS OF ITS PLATFORM

ABSTRACT: The Court of Justice of the European Union has recently issued a judgment in the joined cases C-682/18 (YouTube) and C-683/18 (Cyando) relating to the operator's liability for copyright infringements committed by users of its platform within the meaning of Art. 3, paragraph 1 of Directive 2001/29 on the information society. In the cited cases of the Court of Luxembourg, there are two specific platforms being concerned: the popular video-sharing platform (YouTube) and the file hosting and sharing platform (Uploaded). The judgment was passed almost a year after the public defender's opinion had been published. In the meantime, exactly since June 7th 2021, a new liability regime for copyright infringement for certain internet platforms came into effect (Article 17 of Directive 2019/790 on copyright in the single digital market). Although the judgment was passed two weeks after Art. 17. Directive 2019/790 had entered into force, it was of great importance, especially considering the fact that on one hand, not all EU member states had implemented Art. 17 of Directive 2019/790, and on the other hand, the EU, through the Digital Services Act, was trying to modernize European regulations concerning the platforms regulation. In the paper, the author has, after referring to art. 17 of Directive 2019/790, analyzed the judgments in the combined cases of YouTube and Cyando, as well as the judgment of the Court of Justice of the EU regarding Poland's

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claim for annulment of Art. 17 of Directive 2019/790. The analysis of the judgment has shown that the regulations on copyright should establish a balance between the rights holders protection on one side, and exercising the basic rights such as freedom of speech on the other side.

***Keywords**: video-sharing platforms; the operator's liability; copyright; Directive 2019/790; filtering.*

1. Introduction

Digital transformation is one of the central challenges of the 21st century. An essential part of this digital transformation is the emergence of the "platform economy" (Busch, 2019, p. 788). Digital platforms exist in many areas: online commerce platforms, travel and mobility platforms, and social networks. Today's global market is dominated by powerful platforms such as Amazon, Facebook, Google, and Twitter. Even smaller, nationally oriented platforms have a dominant role in certain countries. As intermediaries, all these platforms provide access to information, allow transactions, and enable far-reaching interactions. As a rule, platforms with a focus on end consumers (Business-to-Consumer/B2C) and platforms for cooperation between companies are distinguished (Business-to-Business/B2B). Platforms, therefore, have their pros and cons (Ohly, 2015, p. 308). On the one hand, they open access to a large number of different contents and create different opportunities for user participation. On the other hand, platforms as intermediaries in the digital world create preconditions for non-compliance with legal regulations, i.e. mass violation of rights by third parties.

In addition to the existing online platforms, new ones are constantly appearing. The spectrum of services offered by the platforms can be divided into several categories: online markets (offer of goods from the host provider or users), rating portals, multimedia portals (especially for streaming and file sharing), social networks and platforms with user-generated content, for example a blog (Aras, 2020, p. 12). In the case of violation of the law by user-generated content, the question of liability becomes specific depending on the type of platform. This concerns infringement of trademark or competition regulations, infringement of copyright and personal rights.

In recent years, the online market has become increasingly global and complex, so that different business models increasingly facilitate access to author's works and other artistic achievements (Wandtke & Hauck, 2019, pp. 627, 629).The responsibility of platform operators for copyright

infringements committed by users of their platforms is increasingly emerging as an important issue not only in intellectual property law but also in the field of personal rights, and consumer rights. At the root of the problem lies the complex relationship between platform operators, active and passive internet users and rights holders. Platforms primarily provide infrastructure for interaction between Internet users, where one user actively participates in creating content and uploading it so that other users can passively consume this content. Active users may violate the rights of third parties with their activities, especially if their activities are aimed at commercial purposes. From the point of view of the persons whose rights have been violated, it seems essential for their effective legal protection that the platform operators are also responsible for the violation of their rights. However, the joint responsibility of platform operators with active Internet users for certain rights violations could represent a risk for passive users from excessive blocking of content on the Internet. The problem with the platform operator's responsibility is that it is often very difficult to assess whether the user's upload is illegal or legal. An additional factor complicating the question of the responsibility of platform operators is the fact that the relevant regulations were adopted at an early stage of the commercial development of the Internet. Therefore, with the emergence of internet platforms, complex issues of responsibility of platform operators, the need for legal protection of holders whose rights have been violated, and the interests of active and passive internet users have opened up (Hofmann & Specht-Riemenschneider, 2021, p. 48).

The European legislator and judicial practice had a special role in balancing the interests of the opposing parties. At the beginning of the development of the commercial Internet, the legislator intended to create new business models that would not be undermined by strict liability regulations (Ohly, 2015, pp. 310, 313). The development of electronic commerce in the information society was aimed at increasing employment, especially in small and medium-sized enterprises. In this sense, Directive 2000/31 on electronic commerce aimed to stimulate economic growth, the establishment of companies with new business models, as well as investment in European companies. Hence the Directive in Art. 12 provided the conditions under which the intermediary is not responsible for the services of the IT society. In this way, the European legislator has privileged hosting, caching, and mediating services with different contents. The directive is also in art. 15 provided for the absence of an obligation to monitor information for information society service providers. However, this general legal framework created certain problems in interpretation.

Changes came with Directive 2004/48 on the enforcement of intellectual property rights and with Directive 2001/29 on the information society. Both directives have provided rules on the responsibility of platform operators, so that the person, whose intellectual property rights have been violated through the platforms, enjoys effective legal protection. Apart from these two directives, the proposal of the Regulation on preventing the spread of terrorist content on the Internet and the reform of Directive 2018/1808 on audiovisual media services are also important on the European level. This phase of legislative activity is characterized by the distinction between deletion and filtering obligations.

In the third phase of European legislative activities, the rights of users came to the fore. The fact that the legal obligations of platform operators result in an "outflow" of internet users has resulted in protests by "internet communities" against the legal framework of platform operator responsibilities. Behind the expression "excessive strengthening, Engl. overenforcemen", "excessive blocking, engl. overblocking" or "intimidating effect, Engl. chilling-effect"[1] states the opinion that in many cases even legitimate contents become victims of deletion (Becker, 2019, p. 636). If suspected illegal content (false positive) is detected on the platform, the platform operator will try to delete such content as a precaution in order to reduce the risk of own liability. Such actions do not only affect the freedom of communication of active users, but also the freedom of information of passive users. In this sense, more and more people were thinking about how this "excessive strengthening" or "excessive blocking" could be solved (Specht, 2017, p. 114).

The proposals ranged, for example, from put-back requests (Raue, 2018, p. 961) to the establishment of user rights (Specht-Riemenschneider, 2020, p. 88), that is, to further state monitoring of the internal procedure of deleting and blocking the platform (Wagner, 2020, p. 447). The pinnacle in regulating the responsibility of platform operators is Art. 17. Directive 2019/790 which guarantees extensive rights of users and the Internet and procedural protection. This regulation refers to copyright and related rights, but it could also serve to guarantee the rights of Internet users (Wagner, 2020, p. 451).

[1] The chilling effect is a legal coin that can be translated as discouraging the legitimate and permitted exercise of a right by threatening or imposing some legal sanction. It originated in the legal theory of the USA and is primarily related to the threat of freedom of expression.

2. Article 17 of Directive 2019/790 on copyright on the single digital market

Directive 2019/790 on copyright and related rights in the digital single market was adopted in May 2019. EU member states have to implement it until June 7, 2021. Behind the reform and the related introduction of upload filters was the reconciliation of property rights and diversity of opinion. With this directive, the EU tried to preserve copyright protection, but also to adapt to the development of the digital age. The use of technology has various effects on the interpretation, application and enforcement of copyright. So-called web browsers, such as upload filters, smart contracts and technical protection measures currently represent the most important technical tool with an indirect impact on copyright.

Since the adoption of this Directive in 2019, to date, extensive discussions are held at the national level in connection with its Article. 17, since this regulation significantly changes the rules on the responsibility of platform operators concerning the activities of their users. Art. 17 of the Directive is actually a complicated provision containing ten rather long paragraphs. Certain positions are contradictory, which is a consequence of long debates and compromises reached at the last moment of the adoption of the Directive (Geiger & Jütte, 2021. p. 519).

In principle, platform operators are liable if their users infringe copyright. However, under certain conditions, platform operators may be released from liability. Therefore, there is no unconditional liability of the operator (Hofmann, 2019, p. 1219). Directive 2019/790 in Art. 17, paragraph 4. lists three conditions that must be cumulatively met in order to exempt online platforms from liability. According to Art. 17, paragraph 4(a) platform operators must make every effort to obtain permission from right holders. The term "every effort" is further explained in para. 5 of the same member. In terms of that regulation, when checking the fulfillment of the conditions from Art. 17, paragraph 4 the principle of proportionality prevails, whereby, among other things, criteria such as type, audience, the scope of service, type of work, or other objects of protection uploaded by users are taken into account. From this, it can be concluded that the obligations from Article 17, para. 4 are not the same for all online platforms (Nico & Marten, 2019, p. 643). The question of whether platform operators have met the conditions to be released from liability will always be assessed on a case-by-case basis depending on the circumstances. In any case, the more comprehensive and reasonable the license offers, the stricter will be the assessment of whether operators are

making maximum efforts to obtain rights holders' permits (Daum, 2019, p. 283). Of course, operators cannot be expected to conclude a license agreement with each individual rights holder. Namely, it is often not possible to trace the rights holders of all content that can be uploaded. It can be expected that operators will obtain licenses for the use of content from organizations for the collective exercise of copyright. The problem is that not every right holder has a contractual relationship with an organization for the collective exercise of copyright. association. This means that platform operators must make their own efforts to discover who the rights holders are (Nico & Marten, 2019, p. 643).

The second cumulative condition in terms of Art. 17, paragraph 4 (b) is that, in accordance with high industry standards of professional diligence, platform operators must make every effort to ensure that certain content is not available, of which rights holders have provided information to operators. In other words, content must not be available on the platform for which the platform operators have not received permission from the rights holders (Nico & Marten, 2019, p. 643). Service providers, therefore, do not only have an obligation to act upon learning that copyright infringement has been committed, as was the case previously, but must from the very beginning prevent the availability of content for which they previously had relevant information, or received the necessary information from the holders' rights.

Platform operators are not obliged to check whether all posted content violates other people's copyrights. They only need to conduct a more detailed search of the content they have been actively informed about. In other words, if rights holders want to prevent the distribution of their works through online platforms, they must take action themselves and provide operators with information about the copyrighted content. In practice, most rights holders will not do this preventively, since such activity is associated with high economic costs.

The third cumulative condition (Art. 17, para. 4c) is the obligation of the service provider to take immediate measures to block access to the relevant content or to delete the relevant content on the website after receiving sufficient substantiated information from the right holder. In order to implement this obligation, service providers must check all uploaded content, i.e. to check if copyright infringement has already been reported in relation to it. The Upload Filter would be useful for performing this check. However, the Directive expressly stipulates that the application of Art. 17 must not lead to any general monitoring obligation (Art. 17, paragraph 8 of Directive 2019/790).

In the new liability regime of online platforms, start-up companies have a special position (Wandtke, 2019, p. 1841). If service providers have been available for less than three years and have an annual turnover of less than 10 million euros, they do not have to fulfill the obligation from Art. 17th century 4 (b) of Directive 2019/790. On the one hand, however, such companies are still obliged to make every effort to obtain the permission of the rights holders. On the other hand, part of the obligation from Art. 17th century 4 (c) is for platform operators to take appropriate actions to block access to content that infringes the copyright or to remove this content from the website.

The implementation of upload filters is practically exempt, as they have no obligation to preemptively review uploaded content, nor to prevent the re-upload of infringing material.

It should be noted, however, that after three years and less, platforms are subject to full liability under Article 17, which means that if they want to avoid any liability, they must cumulatively fulfill all the conditions from Art. 17, paragraph 4 of Directive 2019/790 (Dreier, 2019, p. 771).

New companies that have been available for less than three years and have a turnover of less than 10 million euros, but have a number of monthly visitors greater than five million, also do not meet the requirements of Art. 17, paragraph 4(b).

3. Action for annulment of Art. 17 of Directive 2019/790

EU copyright reform has always been controversial. However, despite great resistance, Directive 2019/790 was adopted on April 15, 2019. Member states have been given a deadline of June 7, 2021, to implement the provisions of this Directive. The most controversial provision of Directive 2019/790 is Art. 17 which for many EU member states shows the danger of upload filters and thus the limitations of free internet and freedom of expression. Poland also shared this opinion and therefore filed a lawsuit in May 2019 for the annulment of Art. 17 of Directive 2019/790.

The subject of the lawsuit was actually certain parts of Art. 17 of Directive 2019/790 (para. 4 b, c), with the aim of proving its incompatibility with fundamental rights, especially with the right to freedom of expression and information guaranteed by Art. 11 of the Charter of Fundamental Rights (case C-401/19). Poland has actually argued that these provisions require online content-sharing service providers to install tracking and filtering technology, which the Polish government believes would prevent legal posting and violate the essence of freedom of expression. Although only parts of Art. 17 of

Directive 2019/790, the lawsuit has a wider significance because it specifies that "if the Court finds that the challenged provisions cannot be deleted from Article 17 of Directive 2019/790 without fundamentally changing the rules contained in the remaining provisions of that article, the Court should annul the article 17 of the Directive as a whole". This is important, as Article 17 as a whole raises significant concerns about whether this provision is compatible with the rights of the EU Charter of Fundamental Rights, but also with the fundamental principles of EU law, such as proportionality and legal certainty.

One of the main counterarguments that the Polish government stated in the lawsuit is that 17, para. 4 of Directive 2019/790 and the obligations it imposes on individual platform operators, leave them with no choice but to install a preventive control mechanism through automated filtering of content posted by users in order to avoid liability. A hearing held before the Court of Justice of the European Union on 10 November 2020 raised several questions and also exposed different understandings of how Article 17 should work, even among supporters of the provision.

In mid-July 2021, the opinion of the Advocate General on this case was published, in which the limits of permissible filtering of uploading (uploading) of content on the Internet by users were set. This opinion could be crucial for understanding the model of application of the rather contested provision of Art. 17 of Directive 2019/790. Immediately before the publication of the Advocate General's opinion, the European Commission published an instruction regarding the disputed provision of Directive 2019/790. According to the opinion of the Advocate General, the controversial Art. 17 of the EU Copyright Directive in the Single Digital Market is compatible with freedom of expression and information. A regulation that requires platforms to either enter into licensing agreements with rights holders or to check content before publication in order to avoid liability hinders freedom of expression but meets the requirements of the EU Charter of Fundamental Rights.

In a judgment dated April 26, 2022, the Court of Justice of the EU followed the opinion of the Advocate General and rejected Poland's lawsuit. In its ruling, the Court of Justice first stated that platforms are indeed required to use so-called upload filters in order to absolve themselves of liability. However, the pre-screening and filtering that this entails tend to limit an important means of disseminating content on the Internet. This liability regulation also leads to restrictions on the rights of platform users to freedom of expression and information. Yet, this limitation is proportionate, although the Court also recognized the danger of excessive blocking. In this regard, the Advocate General pointed out in his opinion that providers of online sharing

services, such as YouTube, Instagram, or TikTok, could tend to systematically block the upload of all content in order to avoid any risk of liability to rights holders, which reproduce the subject specified by the rights holders. However, the content that contained permitted exceptions to copyrighted material, i.e. that could be legitimately shared, could also be blocked. The use of automatic content detection tools increases this risk because filters are unable to understand the context in which copyrighted material is exceptionally lawfully reproduced. Although, according to the opinion of the Luxembourg Court, the legislative authority has set clear and precise limits in order to prevent such excessive blocking. In any case, a filter system that does not sufficiently distinguish between impermissible and permitted content is already incompatible with the right to freedom of expression and information. In its reform, the Union legislature also gave users of online platforms the right to fair use, for example through exceptions for the purpose of parody, caricature, or pastiche. For these rights to remain effective, sharing services should not pre-emptively block all content at all.

Online platforms are within the meaning of Art. 17 of Directive 2019/790 responsible for the illegal posting of protected works. However, providers are exempt from liability if they actively monitor uploaded content. This means that online platforms must use so-called upload filters that recognize protected works, i.e. prevent uploading of copyrighted content.

4. Case C-682/18 and C-683/18

Since its inception, the Internet has challenged many basic principles of copyright. One of the most controversial issues related to the global digital network is the question of the liability of third-party intermediaries for copyright infringement by Internet users. The Court of Justice of the EU had the opportunity to rule on this issue in the joined cases C-682/18 and C-683/18.

In case C-682/18, YouTube users uploaded private recordings of concerts and music by British artist Sarah Brightman from the album "A Winter Symphony" to the portal. German music producer Frank Peterson, however, signed a worldwide exclusive contract with this artist in 1996 regarding the use of audio and video recordings of her concerts. Since the uploading of private recordings of concerts and music to YouTube was done without Peterson's consent, the producer sought damages from YouTube as part of his lawsuit, because the uploaded content can be downloaded from this platform.

In another case (C-683/18), the Dutch specialist publisher Elsevier sued the Swiss company Cyando, which operates the file hosting and sharing platform "Uploaded" which can be accessed via the websites uploaded.net, uploaded.to and ul.to. This platform offers all Internet users free storage space for uploading files regardless of their content. YouTube users have uploaded the works "Gray's Anatomy for Students", "Atlas of Human Anatomy" and "Campbell-Walsh Urology" to this portal.

This content can be downloaded from the shared hosting portal via the "rehabgate.com", "avaxhome.ws" and "bookarchive.ws" link collections.

Both cases came before the Court of Justice of the EU. Namely, by initiating a preliminary decision procedure before this court, the German Federal Court wanted to clarify to what extent the operators of internet platforms are responsible if third parties upload works protected by copyright to such platforms without authorization.

The Luxembourg court examined the platform operator's liability based on the standards that were relevant at the time of the uploads in question. Accordingly, the disputes are based on Directive 2001/29 on copyright, Directive 2000/31 on electronic commerce, and Directive 2004/48 on the enforcement of intellectual property rights. With these legal requirements, Luxembourg judges have concluded that providers such as YouTube are generally not liable for the conduct of their users unless they were aware of the illegal content. In that case, they would be obliged to delete or block the content.

The judgment in the joined cases C-682/18 and 683/18 refers to the legal situation before the introduction of the regime of special responsibility in Art. 17 of Directive 2019/790. Nevertheless, the judgment is significant because Art. 17 introduces direct liability only for a certain subset of online platforms, as its scope is limited to online content-sharing service providers. For platforms that host third-party content and that do not qualify as online content sharing service providers, the issue of liability under Art. 3 (1) of Directive 2001/29 and its interpretation in this judgment remain relevant. The decision may therefore have a direct impact on one of the parties involved, the file hosting service Uploaded. Uploaded probably won't qualify as an online content-sharing service provider, either because it doesn't make large amounts of copyrighted material available to the public or because it doesn't compete with license-based streaming services. The reasons for the judgment support the previous argument, as the Court considered that making available a large number of works uploaded by its users is not the main functionality of Uploaded.

The judgment of the EU Court of Justice in the joined cases of YouTube and Cyando is significant for the interpretation of primary and secondary

liability for online platforms in relation to copyrighted content (Quintais & Angelopoulos, 2022, p. 51). However, before the analyzed verdict was passed, the new EU Copyright Directive 2019/790 began to be applied. In Germany, the implementation of this directive took place in two steps: the Act to adapt copyright law to the requirements of the Digital Single Market was passed, as well as the Act on the Copyright Liability of Online Content Sharing Service Providers. In accordance with these regulations, the prerequisites for the platform's responsibility for illegally posted content by their users have been significantly reduced. Platforms can essentially only avoid their liability by taking some of the following measures. Namely, platforms can acquire licenses for content distributed by their users, for example from authors, artists, or publishers, who receive a fee for this. Alternatively, platforms can prevent the upload of copyrighted content with the help of upload filters, which are still highly controversial. In other words, platform operators must take preventive measures and/or take action.

5. Conclusion

The Copyright Directive on the Digital Single Market was adopted in April 2019. Since the adoption of this Directive, its content, especially Art. 17, which regulates the liability of online platforms, has caused many controversies. This regulation prohibits online platforms from sharing and displaying unlicensed copyrighted content on behalf of users.

To avoid liability, online service providers must obtain authorization from rights holders and content creators. In the absence of such authorization, service providers will be held liable for infringing content unless they are able to demonstrate that (a) they have made every effort to obtain authorization from the rights holders (b) they have made sufficient efforts to ensure unavailability of specific works and other items for which the right holders have provided the service providers with the relevant and necessary information and (b) act expeditiously, after receiving sufficiently reasoned notice from the rights holders, to disable access to or remove from their websites, the reported works or other subject matter of protection.

Immediately after the adoption of the Directive, Poland filed a lawsuit for annulment of Art. 17 of the Directive before the Court of Justice of the EU, considering that this provision contradicts Art. 11 of the Charter of Fundamental Rights of the EU, which regulates the right to freedom of expression and information. Namely, in order to comply with Article 17, service providers must use tools that enable automatic pre-filtering of

content. Poland considered that the imposition of such preventive monitoring measures on providers of content-sharing services on the Internet represented a restriction of the right to freedom of expression and information. Moreover, such measures would lead to excessive blocking of user content, which can only be reversed if the user in question decides to file a complaint and seek redress. The court, however, ultimately rejected Poland's claim for annulment of Art. 17 of Directive 2019/790.

An upload filter refers to software that classifies and processes certain content. This software is tasked with stopping a specific violation of the law upon sufficiently specific indication of the violation and taking precautionary measures to ensure that no further similar violation of the law occurs. By entering appropriate search terms, the filtering software can find suspicious cases, which can then be manually checked if necessary. Manual checking of illegal content is expensive and technically impossible, because for example 400 hours of video material are uploaded to YouTube every minute. Due to the large amount of uploaded content, no other verification was possible.

Directive 2019/790 does not explicitly mention upload filters. However, based on the text of the Directive and the current state of the art, there is actually no alternative to their use.

Directive 2019/790, therefore, introduced novelties regarding the liability of some platforms in the European Union. Under the E-Commerce Directive's safe harbor rules, intermediaries in the EU were protected from liability for the actions of their users committed through their services, provided they did not know about it. It is clear from the provisions of the E-Commerce Directive that intermediaries cannot be obliged to monitor all communications of their users and install general filtering mechanisms for this purpose. The EU Court of Justice has confirmed this in a number of cases, among other things, because filtering would limit the fundamental rights of platform operators and users of intermediary services. Twenty years later, the regime for online intermediaries in the EU has fundamentally changed with the adoption of Article 17 of Directive 2019/790. For certain categories of online intermediaries called "online content sharing providers" the uploading of infringing content by their users now results in direct liability and they are required to use "best efforts" to obtain authorization for such uploading. In addition, online content-sharing providers should use their best efforts to ensure that content for which they have not obtained authorization is not available on their services. It is not yet clear how online content-sharing providers can comply with this obligation. However, it seems inevitable that they will need to install measures such as automatic filtering (so-called

"upload filters"). Given the scope of the obligation, there is a real danger that the measures taken by online content sharing providers to fulfill their obligation will lead to expressly prohibited general monitoring. What seems certain, however, is that automated filtering, whether of a general or specific nature, cannot adequately distinguish between illegitimate and legitimate use of content (for example content covered by copyright restrictions).

Copyright regulations should strike a balance between the protection of rights holders, on the one hand, and the exercise of fundamental rights, such as freedom of expression, on the other. Regulations that impose obligations or incentives to filter, block, or monitor content on the Internet can impede the freedom to share information. Such obligations limit unauthorized but lawful use of copyrighted works, use authorized by open licenses, as well as the use of works in the public domain. On the other hand, such obligations may disadvantage small and non-profit platforms that lack the resources to use tracking systems.

Although Poland's claim for annulment of Art. 17. Directives rejected, member states can use the existing space for implementation. Directives. In particular, the hitherto non-legally binding recitals should be included in national regulations. Member States can make it clear here that certain platforms are exempt from the filtering obligation. Mandatory filtering for younger and financially weak platforms would create a barrier to their entry into the market. However, Directive 2019/790 aims to promote innovation in the Digital Single Market. Achieving these goals depends on many factors, especially the clarity of implementation.

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ODGOVORNOST OPERATORA ZA POVREDE AUTORSKOG PRAVA KOJE SU POČINILI KORISNICI NJEGOVE PLATFORME

REZIME: Sud pravde Evropske unije je nedavno doneo presudu u spojenim predmetima C-682/18 (YouTube) i C-683/18 (Cyando), koje se odnose na odgovornost operatora za povrede autorskih prava koje su počinili korisnici njegove platforme u smislu člana 3, st. 1 Direktive 2001/29

o informatičkom društvu. U navedenim predmetima Suda u Luksemburgu reč je o dve posebne platforme: popularna platforma za razmenu video zapisa (YouTube) i platforma za hostovanje i deljenje datoteka (Uploaded). Presuda je doneta skoro godinu dana od objavljivanja mišljenja opšteg pravobranioca. U međuvremenu, tačnije od 7. juna 2021. godine, počeo je da važi novi režim odgovornosti za povredu autorskih prava za određene internet platforme (član 17 Direktive 2019/790 o autorskim pravima na jedinstvenom digitalnom tržištu). Iako je presuda doneta dve nedelje posle stupanja na snagu člana 17 Direktive 2019/790, ona ima veliki značaj, posebno imajući u vidu da sa jedne strane nisu sve države članica EU implementirale član 17 Direktive 2019/790, a da sa druge strane EU preko Zakona o digitalnim uslugama, pokušava da modernizuje evropske propise o regulativi platformi. Autorka je u radu, posle osvrtanja na član 17 Direktive 2019/790 analizirala presude u spojenim predmetima YouTube i Cyando, kao i presudu Suda pravde EU povodom tužbe Poljske za poništaj člana 17 Direktive 2019/790. Analiza presude je pokazala da propisi o autorskim pravima treba da uspostave ravnotežu između zaštite nosilaca prava, sa jedne strane, i ostvarivanja osnovnih prava, kao što je sloboda izražavanja, sa druge strane.

Ključne reči: *platforme za deljenje video zapisa, odgovornost operatora, autorsko pravo, Direktiva 2019/790, filtriranje.*

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LEGAL AND INSTITUIONAL FRAMEWORKS FOR THE PROTECTION OF VOLUNTARY PENSION FUNDS IN REPUBLIC OF SERBIA

ABSTRACT: This paper represents a synthesis of both theoretical and practical research studies in the field of voluntary pension funds in Republic of Serbia. The authors have selected two significant segments in the scope of these funds contributing to their unobstructed functioning. These refer to the legal and institutional frameworks for the protection of pension funds. Our country is among the last to have introduced the possibility of voluntary pension insurance. This was done by passing an independent Law on Voluntary Pension Funds and Pension Plans. The National Bank of Serbia passed a large number of bylaws regulating their business conduct in our country in more detail. The legal protection frameworks for these funds span across the other branches of law (criminal law, misdemeanor law, and other). In this way, the normative domain of voluntary pension funds functioning has been rounded off. Institutional frameworks for the protection of voluntary pension funds are entrusted to the National Bank of Serbia, which supervises their functioning. This institution can also conduct the supervision over legal entities connected with the subject of the supervision by property, management or business relations, thus enabling a complete insight into their business conduct.

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1. Introduction

Voluntary pension insurance is a specific kind of insurance that ensures compensation to a person upon reaching retirement. Installments of monetary payment, as a form of investment in the voluntary pension insurance, is one of the most secure ways of investing into one's own future. Therefore, the manner in which these funds function is conceived in such a way that their policy is to be cautious and controlled. In a large number of countries, voluntary pension funds exist in parallel with government pension funds. The citizens pay contributions both to the government pension fund and the voluntary pension fund. Apart from that, the pension systems of certain countries enable the citizens not to pay the contributions to the government pension fund, but they can pay them into a fund of their choice. Here, the individual has the right to receive payments only from the fund that was the recipient of the person's monetary contributions.[1]

Developed countries with a high level of monetary dispensation, accompanied by significant material funds necessary for their application, are no longer able to bear such financial burden. Therefore, voluntary pension funds aid the government in this field. In modern time, the countries allow contributions to be paid into the government pension fund that will later enable the individual to ensure minimal material existence. These variations in the functioning of voluntary pension funds represent the models of their organization in most countries with voluntary pension insurance. Serbia has introduced the option of voluntary pension insurance rather late. This was done by passing an independent law regulating the field of voluntary pension insurance (Law on Voluntary Pension Funds and Pension Plans, 2005).[2]

Institutional frameworks for the protection of voluntary pension funds were entrusted to the National Bank of Serbia. It conducts continuous supervision over their business in our country. Its supervisory function

[1] "Investment in a voluntary pension fund is not limited to employees; everyone can invest in it, but it is more profitable if the company pays for its employees as a form of additional contribution, because then there are certain benefits, i.e. tax relief" (Damjanović, 2017, p. 328).

[2] "In current practice across the world, there are countries that have unique pension insiurance systems (Bulgaria, Ireland, China, Canada, the USA), countries with all three pillars of pension insurance (Austria, Hungary, germany, Slovenia, Croatia, Chile, Switzerland, Sweden), while in Serbia, only the first and the third pillar exist" (Piljan, Brzaković, 2017, p. 42).

includes carrying out active control over the work of various subjects in the insurance sector. It passed a large number of bylaws for that purpose that regulate in more detail their business conduct in our country.

2. Legal framework for the protection of voluntary pension funds

The legal frameworks for the protection of voluntary pension funds in our country is done through the application of various branches of law. In this way, the possibilities for protection of the subjects that exercise the rights and obligations in the field of voluntary pension insurance are complete. Therefore, we deem it significant to point out the: economic and legal, misdemeanor, and criminal protection of voluntary pension funds.

2.1 Economic offenses in voluntary pension insurance

Economic offenses in voluntary pension insurance are a reflection of their bad business conduct. This is a special kind of delict that borders a criminal offense. Therefore, in criminal doctrine, we have adopted a special section of criminal law titled corporate criminal law. It came as a result of further development of criminal law and its adaptation to modern business tendencies of legal entities. We can find various definitions for it in literature, as well as the significance of this field in criminal law. As such, Jovašević states that "corporate criminal law is a part of a unique legal system with a special task – to ensure that legal entities provide legal, high-quality, efficient and timely protection of valuables, goods, and interests proscribed in criminal legislature" (Jovašević, 2019, p. 112).

The Law on Voluntary Pension Funds and Pension Plans dedicates special attention to economic offenses of management companies and other legal entities (Article 73). Thereby, it does not point to the definition and meaning of economic offenses in the spirit of this Law, but it exclusively prescribes a monetary fine as the only criminal sanction. However, the meaning of economic offense is tied to the provision of Article 2 of the Economic Offenses Act that proscribes the following: "An economic offense is a socially harmful violation of regulations on economic or financial operations which has caused or may have caused graver consequences and which is defined as an economic offense under the competent authority's relevant regulations. A violation of regulations on economic or financial operations, which despite, having the elements of an economic offense as defined by regulation, represents only

marginal social harm due to its significance and negligibility or its not having any harmful effects shall not be considered an economic offense" (Economic Offenses Act, 2005).

It proscribes a system of monetary fines that is aimed at meeting the purpose of punishment. Nominal fines are prescribed in the span of RSD 500,000 dinars to 3,000,000 for an economic offense for any management company or other legal entity if it:

1. uses the name "management company of voluntary pension fund" in economic trade or any similar name without receiving work permit of a management company (Article 6 of this Law);
2. does not obtain the consent of the National Bank of Serbia for the acquisition of qualified participation in the management company (Article 14, paragraph 1 of this Law);
3. does not relieve the duties of a member of the management even though it was known or it must have been known that such a person ceased to meet the requirements from article 15 of this Law;
4. carries out a merger and acquisitions without the consent of the National Bank of Serbia (Article 20, paragraph 2 of this Law);
5. calculates fees contrary to Article 23 of this law, and thereby severely endangers the interests of voluntary pension fund members;
6. does not keep documents and records in the manner proscribed (Article 27, paragraph 7 of this Law);
7. invests the property of the voluntary pension fund contrary to the provisions of Articles 31, 32, and 33 of this Law and thus severely endangers the interests of its members;
8. uses the name "voluntary pension fund" or a term derived from this name contrary to the Article 35 of this Law;
9. initiates the management of a voluntary pension fund prior to receiving consent of the National Bank of Serbia (Article 36, paragraph 1 of this Law);
10. refuses the surveillance of the National Bank of Serbia over the legality of the business conducted by the management company or voluntary pension fund (Article 68 of this Law).

The possibility of fining the person responsible of the management company or another legal entity is also prescribed. The person responsible shall be fined with a monetary fine of RSD 50,000 to 200,000 for an economic offense. The liability of the legal entities in our country fits with the modern tendencies of this kind of liability in parallel legislature. This is a consequence

of the process of gradual harmonization of our legal solutions with parallel legislature. This process is specifically present in fields that, prior to this, were not the subject of legal regulation. However, the present solutions in parallel legislature indicate various tendencies. Often, they intertwine the criminal and economic responsibility of legal entities and the persons responsible in legal entities. In practice, there are situations where it is not simple to differentiate between the delicts committed and the type of delict liability. This is the result of different solutions in relation to the position of legal entities as subjects that engage in various kinds of legal and business relationships. So, for example, the USA and countries with Anglo-Saxon legal systems apply their legislative solutions in the spirit of precedent law. We have examples in judicial practice where it is not possible to make a clear judgment regarding the extent of the overlap of the responsibility of legal entities and the persons responsible in European solutions that are based on European continental legal systems.

2.2. Offenses in voluntary pension insurance

Offenses pose a special kind of delicts regulated through the framework of several legal regulations. According to the provision of Article 2 of the Misdemeanors Law, a misdemeanor is an unlawful culpably committed act that is stipulated as a misdemeanor by a regulation of the competent authority and for which a misdemeanor sanction is stipulated (Misdemeanors Law, 2019). The legality in proscribing the misdemeanors and misdemeanor sanctions stipulates that no one can be punished for a misdemeanor, or any other misdemeanor sanctions can be applied towards such a person, if the act committed is not stipulated as a misdemeanor by law or by any regulation based on law, and if the kind and severity of the sanction available for the perpetrator is not proscribed (Article 3 of the Law on misdemeanors).

In the field of voluntary pension insurance, the law prescribes the sanctioning of several subjects (legal entities) for misdemeanors. The legislator prescribed misdemeanor liability for three possible subjects: management company, custody banks and pension plan organiser. They have various roles or competencies in the field of voluntary pension insurance. Thus, in exercising their competencies, the subjects responsible (legal entities), can commit misdemeanors through actio or non-action, i.e. failure to perform due diligence. Our legislator purposefully separated the subjects that commit misdemeanors, and lists for each one the manners of committing the misdemeanor. The common factor in all subjects is related to the type of

proscribed sanction, which is a monetary fine, thus not leaving the possibility of applying any other sanction.

Misdemeanors of legal entity – management company (Article 73 a of the Law on voluntary pension funds and pension Plans) are the subject of special legal regulation. They proscribe monetary fines in the span of 300,000 to 1,000,000 dinars, if the management company commits one of the following misdemeanors:

1. "fails to compile and submit financial statements in accordance with Article 27, paragraphs 1 and 6 of this Law;
2. fails to submit the prospectus, and/or summary prospectus of a voluntary pension fund within the prescribed timeline, for the purpose of obtaining the approval by the National Bank of Serbia (Article 38, paragraphs 5-7 hereof);
3. fails to transfer funds in accordance with Article 44, paragraph 2 and Article 45 hereof;
4. offers benefits contrary to Article 49 hereof;
5. publishes an announcement, and/or public invitation, or provides information contrary to Article 50, paragraphs 1, 2, 5 and 6 hereof;
6. engages natural persons not holding the licence of the national Bank of Serbia (Article 51, paragraph 3 hereof);
7. fails to deliver notifications to voluntary pension fund members in accordance with Article 52 hereof;
8. fails to execute the contract regarding withdrawal and use of pooled funds through scheduled payments (Article 62, paragraphs 3 and 4 hereof);
9. enters into the contract of membership and/or pension scheme prior to entering into the contract with the custody bank on the maintenance of the voluntary pension fund's account referred to in Article 63, paragraph 1 hereof."

The law proscribes misdemeanor liability of the responsible person within a legal entity (management company). For these offenses the person responsible within a management company shall also be fined between RSD 10,000 and 150,000.

Offenses of legal entity – custody bank (Article 74 of the Law on voluntary pension funds and pension Plans) are the subject of special legal regulations. The legislator standardized the responsibility of the custody bank independently of the management company. That is in accordance with the separate role of the custody bank in the field of voluntary pension insurance.

The law prescribes a monetary fine in the span of RSD 300,000 to 1,000,000, if the custody bank commits one of the following misdemeanors:

1. "fails to notify the management company of corporate actions that need to be taken in respect of fund assets (Article 64, paragraph 1, indent 3) hereof);
2. fails to execute orders of the management company that are in conformity with the law and the fund's prospectus, or executes the orders of the management company for the purchase and sale of assets contrary to the law and the fund's prospectus (Article 64, paragraph 1, indent 4) hereof):
3. fails to control, confirm and report on a daily basis to the National Bank of Serbia on the net asset value of the voluntary pension fund and the value of investment units (Article 64, paragraph 1, indent 5) hereof);
4. fails to control the return of the voluntary pension fund (Article 64, paragraph 1, indent 6) hereof);
5. fails to notify the National Bank of Serbia of irregularities detected in the management company's operations immediately upon detection of such irregularities (Article 64, paragraph 1, indent 7) hereof);
6. fails to submit to the National Bank of Serbia and other competent authorities, in the name of the fund, reports against the management company for the damage incurred to the fund (Article 64, paragraph 1, indent 9) hereof);
7. fails to notify the National Bank of Serbia of termination of the contract and reasons for such termination (Article 65, paragraph 3 hereof)."

The law proscribes misdemeanor liability of the responsible person with the custody bank. For these offenses the person responsible within the custody bank shall also be fined between RSD 10,000 and 150,000.

Misdemeanors of the pension scheme organiser (Article 75 of the Law on voluntary pension funds and pension plans) are the subject of special legal regulations. It is necessary to emphasize the specific legal position of the pension plan organiser in the domain of voluntary pension insurance. The organiser is obliged to ensure equal membership conditions to the employees and/or members in the pension plan. The organiser can organize another pension plan for specific groups of employees and/or members under specific conditions, if the organiser previously organized the pension plan and ensured the payment of pension contribution in accordance with that plan for all employees and/or members (Article 3 of the Rulebook the conditions, manner and procedure of organizing and functioning of pension plans, 2011).

In accordance with the special role of pension plan organiser in the field of pension insurance, the law proscribes a monetary fine in the nominal span of RSD 300,000 to 1,000,000 if the organiser does not ensure equitable conditions of membership in the pension plan in accordance with the provision of Article 61, paragraph 1 of this Law. Any natural person and/or contractor – organiser of pension plan, shall be fined for similar offenses with RSD 10,000 to 500,000. Apart from that, any person responsible with the pension plan organiser shall be fined for these misdemeanors with a fine of RSD 10,000 to 150,000.

To sum up the liability of legal entities and natural persons for the committed misdemeanors, we can state that our legislator applied the same criteria for the conditions, manners of establishing and types of misdemeanors. However, the differences can be noted in the proscribed nominal spans of monetary fines. They are incomparably higher for legal entities and lower for natural persons. Such a manner of prescribing the sanction spans is unique to monetary fines in our legislature. Therefore, it is not possible to discuss unjustified limitation of property law of the aforementioned subjects, which would mean its reduction for the amount of the given monetary fine. On the contrary, the legal regulation of limiting the rights to property lies in the fact that it ensures the setting of claims of the government based on fiscal obligations and fines (Joksić, Radovanov, & Rajković, 2018, p. 188).

2.3. Criminal offenses in voluntary pension insurance

Unobstructed functioning of voluntary pension funds is not possible without legal protection mechanisms. They serve as the final means (*ultima ratio*) in preventing unlawful activities. That is why there is a greater number of incriminations that protect the rights and interests of subjects in the field of voluntary pension funds. Within the penal provisions, the Law on Voluntary Pension Funds and Pension Plans contains criminal acts that primarily protect the interests of the members of the voluntary pension fund. Their meaning and essence should be interpreted in the spirit of the current criminal legislation. This is how the protective function of criminal law in the field of voluntary pension insurance is realized most effectively. This is what makes criminal law the necessary link in the protection of individual and collective social values (Joksić, 2019, p. 7).

The penal provisions of the Law on Voluntary Pension Funds and Pension Plans prescribe two criminal offenses. Those are:

Criminal offense of publication of prospectus with false data (Article 72 of the Law on Voluntary Pension Funds and Pension Plans, 2005) prescribes

the following: "Anyone who, with a view to misleading the public, publishes false data on the legal and financial position of the fund or its business opportunities, or other false facts relevant for making the investment decision, or fails to publish complete data on such facts in the prospectus, summary prospectus, annual and semi-annual report of the voluntary pension fund, shall be sentenced to up to three years in prison."

The protected subject of this criminal offense is not specified in the description of the criminal offense. We believe that the intention of the legislator was for the protected object of this offense to be the property of the voluntary pension fund members, and we interpret so based on the very description of the criminal offense. Any person can be the perpetrator of this criminal offense. However, it is evident that only certain individuals can be the perpetrators of this offense in practice. The nature of the work of certain persons must be related to the act of committing a criminal offense. The subjective element of a criminal offense is related to the perpetrator that commits the offense with intent. This is clear in the beginning of the description of the offense, therefore, for its existence the highest level of consciousness of the perpetrator of the criminal offense is required. The object of the criminal act is the voluntary pension fund's prospectus, summary prospectus, annual and semi-annual reports. These are the material objects upon which the perpetrator commits the offending act. When it comes to act of committing a crime, it is alternatively defined, which means that a criminal offense will exist if the perpetrator commits one of the following actions: publishes false data and false facts, or does not publish complete data about those facts. In recent years, the publication of data is done using the possibilities provided by the Internet (Joksić, Mitrić, & Rajković, 2015, pp. 227-229).

"Criminal offense of Unauthorised performance of management company's activities and unauthorised operations (Article 72a of the Law on Voluntary Pension Funds and Pension Plans, 2005) prescribes the following: A responsible person in a legal entity performing the activities of a management company or operating as a voluntary pension fund without being granted the operating licence and without being registered under the law shall be sentenced to up to three years in prison."

The protected object of this criminal offense is the legal security of the business that is jeopardized. Unlike the one previously analyzed, only a person responsible in a legal entity can be the perpetrator of the criminal offense, which narrows the circle of the possible perpetrators of this criminal offense. Therefore, we believe that by prescribing these criminal offenses, the legislator protected the most sensitive points related to the functioning

of voluntary pension funds, as well as that this was done in a high-quality manner, with a clear criminal policy.

The legal framework of voluntary pension funds should be aligned with the basic principles on which they operate. Those are: voluntariness, freedom to decide on payments and subsequent withdrawals of funds, accumulation of funds on individual user accounts and capitalization of paid contributions (Bilankov & Aleksić, 2016, pp. 676-677).

3. Institutional frameworks for the protection of voluntary pension funds

Institutional frameworks for the protection of voluntary pension funds are done by the National Bank of Serbia. Such is done through a special surveillance system over the business conduct of these funds. This derives from the fact that insurance is an economic activity of social interest (Šulejić, 2005, 98).[3] The National Bank of Serbia conducts supervision in the field of insurance as a segment in which there is a potential for various misuse. National Bank of Serbia can also supervise legal entities that are connected by property, management or business relations with the supervised subject, and to request insight into the business ledgers of all participants in the business that is the subject of surveillance – if such action is necessary in order to conduct surveillance over the insurance related activities (Article 187, paragraph 2 of the Insurance Law, 2014). Its supervisory function entails actively exercising control over the work of various entities in the insurance sector. Hence, voluntary pension insurance is the subject of primary supervision of the National Bank of Serbia.

3.1. Competence of the National Bank of Serbia in the business of voluntary pension insurance

Creating monetary policy and managing its flows is the primary function of the National Bank of Serbia. However, its role is far more complex when one considers the fact that that it carries out supervision and control over the entire financial market, all its participants, and, at the same time, it

[3] In legal doctrine, there are various forms of insurance fraud classification. One of the more prevalent is the division into hard and soft fraud. Hard fraud includes pre-prepared plans, while soft fraud implies the situational actions of the perpetrators, thus excluding premeditated action in a specific case (Petrović, Stojanović, 2012, p. 61).

was derogated the right to create its own normatives in all segments of its competence. This is precisely the reason why this government institution is an active participant in all processes related to voluntary pension insurance. Its significance and role in terms of establishment, functioning, control and supervision, i.e. normative regulation of certain issues, is of vital importance for the proper functioning and business conduct of all entities participating in this process.

Supervising function of the National Bank of Serbia is done in order to protect the interests of the voluntary pension fund members, to take care of their property, and to control the entities entrusted with the affairs of managing the voluntary pension fund. In the field of voluntary pension fund, its role is seen as follows:

1. The main role of the National Bank of Serbia refers to the implementation of supervision in connection with the implementation of the provisions of the Law on Voluntary Pension Funds and Pension Plans. The basic idea of the legislator, when passing this law, was to place all issues in the domain of ensuring the implementation of this law under the competence of this government institution. In this way, the implementation of all the provisions of the mentioned law is in most cases the responsibility of the National Bank of Serbia.
2. An important role of the National Bank of Serbia is also in the scope of passing bylaws. They are a necessity and a need, generally related to the implementation of any other legal regulation. The exception is the fact that certain normative powers are transferred to the government institution, and not to the legislator or law proposer.

By carrying out comprehensive supervision over implementation of legal regulations, the National Bank of Serbia is authorized to maintain the register of voluntary pension funds (Article 67 of the Law on Voluntary Pension Funds and Pension Plans). In a special Decision, it specified the legal provisions regulating the legal area and practical scope of its supervision in voluntary pension insurance (Decision on the method voluntary pension fund management companysupervision, 2011). The Decision prescribes the manner of conducting supervision over the voluntary pension fund management company, the procedure for issuing orders and taking measures in carrying out this supervision, the deadlines for executing orders and the duration of the measures, as well as other activities that the company should carry out based on the order to eliminate irregularities (indent 1) of the Decision). We believe that the scope of the issues in the competence of the National Bank of

Serbia should be decreased, and that passing bylaws by the Bank should be an exception not a rule. Finally, the obligation of the National Bank of Serbia to manage the registers of voluntary pension funds should not be neglected. The register includes the names of all voluntary pension funds in the Republic of Serbia, as well as the names of their management companies, the value of those funds, their investment units, and the value of the overall fund.

3.2. Supervision modalities of the National Bank of Serbia

As part of conducting supervision, the National Bank of Serbia issues and revokes operating licenses and management licenses of management companies of voluntary pension funds. Within the framework of the competences entrusted to it, the National Bank of Serbia conducts supervision by applying the following control measures (Article 68 of the Law on Voluntary Pension Funds and Pension Plans):

1. Off-site control, i.e. the collection, monitoring and inspection of reports and notifications submitted to the National Bank of Serbia according to law. Off-site control of this kind has the goal to provide and deliver high-quality, up-to-date and systematic information that are of direct or indirect interest in connection with the functioning of voluntary pension funds.
2. On-site control, which includes measures and activities of extraordinary nature, and which occur as a result of certain conditions that are carried out mainly in extraordinary circumstances that indicate a greater degree of irregularities in the work of a fund management company or custody bank. It is a type of field control, which, apart from the aforementioned, can include requests regarding the delivery of information on certain issues of importance for the business conduct of management society and/or custody bank. In a special Decision (indent 2), National Bank regulated in more detail the ways of conducting supervision within the framework of direct and indirect control.

Within the framework of the supervisory function of the National Bank of Serbia, such established way of performing on-site and off-site control can be labeled as the most effective. Our legislator purposefully focused the supervision to all the most important segments of functioning of voluntary pension insurance.

3.3 Supervision measures of the National Bank of Serbia

Conducting supervision by the National Bank of Serbia includes taking certain supervision measures in case that certain irregularities are determined during this procedure. These irregularities can refer to the work of management companies and custody banks. If it is determined that a management company or a custody bank is engaged in unlawful or irregular business activity, the National Bank of Serbia could order certain supervision measures focused on these subjects. When the legislator gives a certain institution the right to revoke the work licence of a management company which established the voluntary pension fund, then it is quite clear that this institution represents the most important influencing factor in the triangle consisting of the management company, the custody bank and the National Bank of Serbia. We are of the opinion that it is quite understandable that the legislator has prescribed this type of competence for this institution, because otherwise it would not be consistence in the implementation of this law. We highlight precisely because the National Bank of Serbia issues the work licence to a management company and a permit to establish a voluntary pension fund, so it would be extremely illogical for another institution or other state body to decide on its revoking (Golubović, 2003, pp. 111-117).

The National Bank of Serbia does not issue strict supervision measures if the management department of a given company is willing to work on removing the aforementioned issues, and it has the ability to find a suitable solution. On the contrary, the observed omissions and violations of the law by the management company certainly gain more importance bearing in mind the fact that the management is not willing or capable to remove them. In these situations, the main interest that must be taken into account is the interest of the members of the voluntary pension fund and the protection of their investment units. Hence, our legislator, immediately before stating the type of measures "points out that if in the course of supervision of the management company or the custody bank it establishes any illegalities and/or irregularities under this or other law pursuant to which the National Bank of Serbia is in charge of performing supervision, or identifies non-compliance with the risk management rule, the National Bank of Serbia shall take one or more measures (Article 69, paragraph 1 of the Law on Voluntary Pension Funds and Pension Plans, 2005):

1. issue a written warning notice,
2. issue the order to eliminate the identified irregularities,

3. withdraw the approval of appointment of a member of the management company's management,
4. revoke the operating licence of the management company."

Apart from these supervision measures, the National Bank of Serbia can resort to monetary fines. In practice, monetary fines are most often applied to legal entities, as part of determining their economic, misdemeanor and criminal liabilit.[4] Therefore, it is understandable that this kind of punishment finds its place in the supervision of their business.

4. Conclusion

Voluntary pension insurance is a novelty in our pension insurance system. Traditionally relying on the government pension system, our society has long resisted the idea of private form of insurance. The existing mistrust arose from the fact that there are numerous possibilities of abuse in the field of private pension insurance. That is why legal provisions regulate in more detail the manners of legal and institutional protection in their functioning.

The legal framework for the protection of voluntary pension funds in our country is based on economic, misdemeanor and criminal liability. Our legislator pays special attention to economic offenses of management companies and other legal entities. However, the concept and the meaning of economic offenses are not specified, but instead nominal (minimal and maximum) fines are prescribed. At the same time, the law prescribes the possibility of fining the person responsible of the management company, and/or other legal entity. Legal provisions purposefully separate the entities that commit offenses. As part of that, the methods of their misdemeanor behavior are listed in detail. As with economic offenses, financial penalties are proscribed for legal entities (management company, custody bank and pension fund organiser) and for natural persons, i.e. the persons responsible. Finally, as the last resort (*ultima ratio)* of protection, criminal liability is foreseen in the field of voluntary pension insurance. Two criminal offenses are prescribed, namely: Publication of prospectus with false data (Article 71) and Unauthorized performance of management company's activities and unauthorised operations (Article 72a).

[4] As part of determining criminal liability, two types of penalites can be imposed on a legal entity: a monetary fine and termination of the legal entity. They can only be imposed as major punishments (Joksić, 2010, p. 139).

The institutional form of protection of voluntary pension funds is in the competence of the National Bank of Serbia. This is done through a special supervision system overseeing the work of all funds. The National Bank of Serbia can also supervise legal entities that are connected by property, management, or business relations with the subject of the supervision where supervision is carried out, and to gain insight into the business ledgers of all participants in the business that is the subject of supervision – if such is necessary in order to supervise the performance of insurance activities (Article 187, paragraph 2 of the Insurance Act). In this way, the framework of institutional protection of voluntary pension funds in our country is completed.

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PRAVNI I INSTITUCIONALNI OKVIRI ZAŠTITE DOBROVOLJNIH PENZIJSKIH FONDOVA U REPUBLICI SRBIJI

REZIME: Rad predstavlja sintezu teorijskih i praktičnih istraživanja na području dobrovoljnih penzijskih fondova u Republici Srbiji. Autorke su odabrale dva značajna segmenta u radu ovih fondova kojima se doprinosi njihovom nesmetanom funkcionisanju. Oni se odnose na pravne i institucionalne okvire zaštite penzijskih fondova. Naša zemlja je među poslednjima uvela mogućnost dobrovoljnog penzijskog osiguranja. To je učinjeno donošenjem samostalnog Zakona o dobrovoljnim penzijskim fondovima i penzijskim planovima. Narodna banka Srbije je donela veći broj podzakonskih propisa u kojima se detaljnije reguliše njihovo poslovanje u našoj zemlji. Pravni okviri zaštite ovih fondova prostiru se i na području drugih grana prava (krivičnog prava, prekršajnog prava i dr.). Na taj način je zaokružen normativni domen funkcionisanja dobrovoljnih penzijskih fondova. Institucionalni okviri zaštite dobrovoljnih penzijskih

fondova povereni su Narodnoj banci Srbije, koja vrši monitoring nad njihovim funkcionisanjem. Ova institucija može vršiti nadzor i nad pravnim licima, koja su povezana imovinskim, upravljačkim, odnosno poslovnim odnosima sa subjektom nadzora, kod koga se vrši nadzor, čime se omogućava celoviti uvid u njihovom poslovanju.

Ključne reči: *Narodna banka Srbije, dobrovoljni penzijski fondovi, nadzor, krivično delo, prekršaj, privredni prestup.*

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A POLICE SERVICE DOG AS A MEANS OF COERCION

ABSTRACT: The use of animals in the execution of complex tasks by police officers and military units does not represent any novelty in the operational and legal sense. But, this topic has not been considered enough in professional and scientific circles, for which there should be found some space, especially if we take into account certain "news" in the legislative sense occurred at the international level. The basic hypothesis of this paper refers to the consideration of the issue of the use of a police service dog. Within the previously mentioned discussion, the focus of the work is grouped into two parts, namely the first part relates to the legislative provision of the use of police service dogs in terms of training and use, while the second one refers to their tactical application when performing complex tasks. In particular, it is considered the issue of legislative news and initiatives appeared in the American legislative system. Bearing in mind the increasingly dominant attitude of the world population on the topic of animal protection, there is to be expected that a similar topic will soon be raised in our country too. In this research, in addition to analysis, deduction and comparative scientific methods, the specialization method was also used. At the end of this research, in the concluding remarks, there was presented a review of the most significant parts of the work as well as specific conclusions arising from this overall research. Of course, the authors' personal views were also included.

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Key words: *a police service dog, dog and dog handler's training, tactical use, legal regulations, a means of coercion.*

1. Introductory considerations

Many animal lovers, especially dogs lovers, face the necessary need to socialize their pet or to teach it how to "behave" at certain times or in certain places. Precisely on the basis of the mentioned, it could be said that every dog owner becomes a trainer of his pet to a certain extent and intensity. Someone achieves results in this with more or less success, and of course there are quite a few opposite examples.

Practically, it could be said that most people do dog training in their own way and with some of their own modalities... with more rewards and less punishment, or vice versa or relatively proportional, and maybe in a some different way. What is certain is that in order to achieve the best results, it is necessary to consult experts or professional trainers, ie. dog trainer.

Dog training can be various, starting from some basic training that is used in a dog's daily life (civilian pet dogs), up to highly specialized training intended for hunting dogs, dogs in rescue units or for dogs used in special jobs in the army and the police.

In order for a dog to be able to tame any level of training, it is necessary that it has mental and physical healthy predispositions, that it has no hereditary diseases, that it has been properly raised starting from the monitoring of the state of health from the first day, regular vaccinations but also of course the development of all senses from the earliest period (still in the kennel).

Every dog needs socialization, especially after leaving the kennel, ie. after separation from the litter, which represents the period from the eighth to the ninth week of life. Early socialization is one of the most important, which means learning the basics, adapting to the environment, adapting to the eg. noise, crowds, other animals, other dogs...

According to cynology's accepted and adopted views, the period of six to twelve months is the optimal period for dog training because then certain bad habits can be effectively avoided. This does not mean that the training cannot be continued or started in a later period.

In this paper, the exclusive focus will be on considering issues related to official police dogs in terms of their importance in police work, specialist training of dogs and their use as a means of coercion, then the role and importance of the service dog's handler.

2. Certain legislative provisions relating to dogs in domestic legislation

The Animal Welfare Act (2009) which regulates the welfare of animals, the rights, obligations and responsibilities of legal and natural persons, i.e. entrepreneurs, for the welfare of animals, the treatment of animals and the protection of animals from abuse, the protection of the welfare of animals during deprivation of life, keeping, breeding, traffic, transportation, slaughtering and conducting experiments on animals, as well as other issues of importance for the protection of animal welfare, when it comes to the welfare of the Law refers to animals that can feel pain, suffering, fear and stress. Under the aforementioned, the same law foresees the following: 1) animals used for production purposes, 2) animals used for scientific research, biomedical and educational purposes, 3) animals used for exhibitions, competitions, performances and other forms of public display, 4) working animals and service animals, 5) pets, 6) abandoned and lost animals and 7) wild animals in captivity.

From the above, it can already be seen that the legislator makes a distinction between a service animal and a pet. Given that the focus of this paper is on (official) dogs, it is not necessary to further clarify beforehand.

Often people accept without question that every dog that is a so-called working dog or herding dog is able to complete the special training for protection work. This belief is, however, not true, and therefore we have to make careful choices when selecting dogs for this role. With a lot of perseverance, an experienced handler may achieve something with such a dog, but for the dog herself the training and work will mostly be a mental torment, and this will be expressed sooner or later in serious disorders. Therefore, there is an obligation and a great need to choose a quality service dog. The difference between a pet dog and a service dog is huge (Gerritsen & Haak, 2014).

Article 53 of Act Animal Welfare Act (2009) defines pets. According to this Law, the owner or keeper of a pet is obliged to provide the pet with care, care and housing, in accordance with the species, race, sex, age, as well as physical and biological specificities and needs in the behavior and health of the pet (Article 53, paragraph 1). Then, pets are marked and registered in accordance with the law regulating veterinary medicine. The owner, that is, the keeper of pets, is obliged to prevent pets from endangering people and the environment through proper handling and other measures and means (Article 55).

When it comes to the mentioned protection of animals, Article 7 is extremely precise about what is prohibited, but for the sake of brevity we will point to point 6 of the mentioned article, which states that it is forbidden to

use technical devices or other means that punish animals and its behavior is affected, including barbed collars or means of training or chasing with the use of electricity or chemical substances, except in the training of service dogs and we refer to point 9, which states that it is forbidden to incite an animal to people or other animals, except in the procedure training of service animals.

From the above, it can be seen that animal training is allowed, but that service animals have a longer status.

Article 4, point 48 of the same Law defines that, in the sense of the Law, a service animal is considered an animal that is trained and used to perform the work of certain state bodies and that it is about service horses and dogs.

Animal training is allowed as we have already indicated, which follows from the indicated text of the law itself. It is more specifically provided for in Article 10, which states that animal training is the training of service and working animals and pets and that animal training must be carried out in a manner appropriate to the species, breed and purpose of the animal.

At the end of this part, we would also like to refer to the Rulebook on the manner of keeping dogs that may pose a danger to the environment (2010), which prescribes the manner of keeping dogs that are kept as pets and that may pose a danger to the environment. This regulation provides in Article 2 that a dog that is kept as a pet, and that can pose a danger to the environment, any individual of that species that: 1) attacked a person without an obvious reason and caused bodily injury or death, 2) attacked another dog for no apparent reason and caused him serious bodily injury or death, 3) bred, that is, trained for dog fighting or found in an organized fight with another dog, 4) intended for the protection of property or as a body guard, 5) pit bull terrier breed or a mix of that breed, which does not come from controlled breeding, 6) Bull Terrier, Stafford Terrier, American Stafford Terrier and Mini Bull Terrier or a mixture of these breeds. By the same rulebook (and the same article), everything mentioned does not apply to the service dog, which it clearly indicates.

Operational deployment of police dogs may place them at risk of harm this must be measured against the potential risk to human life if the dog were not to be so deployed. However, the welfare of police dogs is of paramount importance when considering all other aspects of their husbandry. To a large extent, the training of the service dog and certainly its handler is related to the aforementioned (Ingram, 2014).

3. Service dog training and dog handler training

The beginning of the training of a service dog begins with its selection. Selection can be viewed in a broader and narrower sense.

In a broader sense, selection implies the selection and selection of a breed of dog that has a predisposition for possible training for special needs and tasks that the dog will later perform. By this is meant the potential possibilities of successful training and execution of those tasks, but also the general psycho-physical characteristics of the specific breed.

In a narrower sense, selection implies the selection of a specific puppy or several puppies from one litter of the same breed. Special attention is paid to the physical features of the puppy, such as the anatomy of the head and jaw, especially if there is a scissor tooth if choosing a dog to be trained and trained as a guard dog, if it is a search dog, then attention is paid to the nasal mushroom well developed, the muzzle is wedge-shaped, it is shorter than the skull. It is desirable that the ratio of the length of the muzzle to the skull is 8.5:10 and that it continuously tapers from the feet to the nose mushroom and that the nose is flat (Cynological Association of Serbia, 2022).

Certainly, in addition to the above, the dog should meet the requirements of upcoming training and later work with its character in terms of obedience, intelligence, good memory, courage, etc.

The puppy is selected by a member of the unit, i.e. his future handler. When the dog handler assesses that the puppy has psycho-physical predispositions, the preparation and planning of dog training begins. When the circumstances allow it, the dog stays with the same handler who chose him during his service. This is of particular importance in creating strong bonds and trust between them, all with the goal of accurately executing orders.

It is interesting to mention that the handler of the service dog is on a voluntary basis, ie the police officer himself applies for the training of the handler of the service dog.

The training of service dogs includes basic training and auxiliary training, if necessary, while specialist training is planned and carried out according to the purpose of the dog within the unit in which it completes the task. It is important that the training is carried out in day and night, in different climatic and spatial conditions, all in order for the dog to get used to the conditions it may encounter when performing tasks in the field. Certainly, an integral part of the training is overcoming the obstacles that the dog goes through in the presence and guidance of its handler. The dog handler (trainer) must suppress the unwanted reactions of the dog, that is, encourage and strengthen the positive ones. As an example, we can cite the suppression of the instinct to bark in dogs that are used for attack (protection) so that they do not reveal the position of police officers. On the other hand, you should develop the habit of using different shelters, holes and similar places that an ordinary dog would instinctively want to avoid (Special units, 2015)

Training a service dog handler is no less a demanding task. The training provides the necessary conditions to standardize knowledge, skills and attitudes in the field of application of police powers, i.e. effective and efficient use of means of coercion-official dogs for searching for perpetrators of crimes, detection of explosive substances and intoxicants. Service dog handler can be police officers from the Service Dog Company, i.e. police officers who use service dogs in their scope to search for perpetrators of crimes, detect explosive substances and intoxicants (Ministry of the Interior, 2014).

The training has the following objectives: developing the ability to act and use a service dog in accordance with legal regulations when taking measures while performing regular jobs and activities; developing the ability to condition with a service dog, exercise obedience, habituation, defense and attack, track, detect and find explosive substances and intoxicants; developing the ability to carry out veterinary prevention and protection of the service dog; developing the ability to handle service dogs from acquisition to disposal; developing the ability to use an official dog to search for perpetrators of criminal acts, to detect explosive substances, and to detect the presence of intoxicants.

Within the training of service dog handlers, special attention is paid to the acquisition and adoption of new skills in the field of criminal use of service dogs; cynology; dog veterinary and first aid; anti-sabotage protection; recognition of intoxicants; obedience and habituation of the dog; defense and attack; track and trace and tracking dog training techniques; and detection and recovery of explosives and narcotics (Ministry of the Interior, 2014).

The dog's concentration is most effective for 15-20 minutes, and daily training is spread over 2 hours throughout the day. The basic training of a dog lasts from four months to a year.

Dogs are rewarded only during training and training. In real tasks, they are not rewarded because the conditions are not controlled and the degree of success of the completed task is not known. For example. the dog is looking for drugs, marks the bag from which the drugs were repackaged, and there are still traces on the field, i.e. the task has not yet been completed, and with the reward the dog can interpret that his work is finalized.

4. Tactical use and legislative regulation

A well-trained (trained) service dog is an exceptional help to police officers when performing tasks, especially those that, by their structure and expectations, represent complex tasks. Constant work and investment in the training of the

guide and the dog, especially in exercises and actions related to obedience, readiness, overcoming obstacles, overcoming an armed or unarmed person, finding and following a trail, detecting narcotics and explosives ensures a higher degree of reliability when preventing or discovering someone criminal act.

The Law on the Police of the Republic of Serbia (2018) stipulates that service dogs are a means of coercion (Article 105).

The issue of the service dog is defined more precisely in Article 116 as follows: the service dog can be used as a means of coercion in cases where: 1) the conditions for the use of physical force or the official baton are met, 2) the conditions for the use of firearms are met, 3) disturbed public order is established.

The same article also states that the use of a service dog is considered letting the dog towards the person and preventing the dogs from passing the person.

At the end of the mentioned article, it is also indicated that the service dog can be used: 1) with a protective basket and on a leash, 2) with a protective basket and without a leash, 3) without a protective basket and on a leash, 4) without a protective basket and without a leash.

The Rulebook on Police Powers (2022) more precisely regulates the use of service dogs at article 87.

According to the aforementioned rulebook, a service dog is a specially trained dog that, under the guidance and control of a police officer, can be used as a means of coercion.

As a means of coercion, a service dog can only be used under the supervision of a professionally trained police officer (service dog handler), in a way that will not cause citizens to be disturbed.

If the circumstances of the specific case allow it, the police officer will warn the person before using it that he will use the service dog against him as a means of coercion.

The service dog is released towards the person on a leash, with or without a protective basket, or without a leash, with or without a protective basket.

To prevent the passage of persons, the service dog is used on a leash with or without a protective basket.

The method of using the service dog in a specific case is determined by the service dog guide in accordance with the assessment.

When using a service dog, the police officer makes sure that the dog does not cause unnecessary bodily harm to the person it is being used against.

If a service dog is left without a guide while performing police work, another police officer will take the necessary measures to stop using the service dog as a means of coercion.

In the above-mentioned Rulebook on police powers, the previous provision for the use of a service dog, which was regulated by the Rulebook on technical features and methods of use of coercive means (2014), was integrated and expanded.

The Regulation on Special and Special Police Units (2020) additionally deals with the issue of service dogs.

This decree, in its part related to special equipment, means and weapons (Article 62), regulates the issue of equipment for police officers, equipment for service animals, special equipment for tools and weapons, and equipment for being in the field.

Article 62, paragraph 4, foresees group equipment for a company of service dog guides, namely: chain collars of various sizes, leather necklaces, ammo with the inscription police, various balls, drug scent kits, explosives and detection of counterfeit banknotes, protective baskets for dogs (different sizes and purposes), garabini stronger; dog conditioning strips with ams of various sizes, dedicated boxes for dogs, brush with mechanism; protective vest for a dog-JRM, protective vest for dogs – detection of explosive substances, gas mask, robot suit, marker suit, marker sleeve left, right marker sleeve, marker sleeve for puppies, marker stick, marker whip, double leashes, working, short leashes, jute import various, protective undergarment-kevlar etc. Then, special vehicles for the transport of the service dog and attached trailers for transport are provided.

The tactical use of hunting dogs, in addition to what already follows from the laws and regulations indicated so far, is most often in the search for fugitive perpetrators of criminal acts, regular and extraordinary counter diversionary inspections of sports halls, stadiums and all other public facilities, especially when it comes to anonymous reports that they have been planted bombs, securing public gatherings, etc.

In the end, it is necessary to point out the data that indicates that service dogs are engaged in more than 400 actions during the year (Radio Television of Serbia, 2022).

5. The use of service dogs in the United States police force

In terms of legal regulations, there are no drastic differences compared to domestic legislation. The use of the police service dog is clearly defined, as well as the tasks that can be assigned to it (Chapman, 1979).

The same is true with training, i.e. the training itself, which arises from the need to successfully perform police tasks, is almost identical to domestic

training, especially when international specializations and seminars of trainers and handlers of service dogs are taken into account.

There are differences, and we will definitely point out them below. Perhaps the biggest difference that follows is how an attack on a service dog is treated. By passing the Federal Law Enforcement Animal Protection Act, 1999, which was adopted in 1999. Amends the Federal criminal code to prohibit, and set penalties for, willfully and maliciously harming a police animal or attempting or conspiring to do so. Includes among such penalties a ten-year maximum term of imprisonment if the offense permanently disables or disfigures, or causes serious bodily injury to or the death of, the animal. Defines a "police animal" as a dog or horse employed by a Federal agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of criminal offenders.

It can also be added that in the state of Tennessee, at the beginning of 2022, a citizen's initiative was submitted in which it was demanded that penalties for attacking a service dog or service animals be tightened. This initiative started as a result of the gunshot wounding of a service dog at the end of October 2021.

The new law says that those who knowingly, unlawfully harms a police dog, fire dog, search and rescue dog, service animal or police horse would now be charged with a Class B felony, which carries a sentence of eight to 30 years in prison, and up to a $25,000 fine.

Anyone between the ages of 14 and 17 who kills or causes serious injury to one of those animals could also be tried as an adult.

Previously, killing a law enforcement service animal was treated as grand theft, a minimum Class E felony, which carries a one to six-year sentence and up to a $3,000 fine. This initiative, and therefore the new law in the state of Tennessee, is symbolically named Joker's Law, precisely after the wounded police service dog (Joker's Law, 2022).

An additional difference that can be pointed out relates to the question of what happens after the retirement of a service dog. The current legislative regulation in the USA is almost no different from our domestic one. The handler of the service dog has the option of "adopting" it, and in the event that it does not happen for some reason, the dog will be adopted by another police officer or a civilian (which is extremely rare). An initiative that has been around for some time is about "retired" service dogs getting a pension.

An example of the aforementioned already exists in England in the Nottingham Police, where retired police officers have an annual "pension" of 500 pounds, which they receive for three years (Pleasance, 2022).

6. Conclusion

The use of animals in the execution of complex tasks by police officers does not represent any novelty in the operational and legal sense, but this topic has not been considered enough in professional and scientific circles.

The need to research this topic stems from the insufficient consideration of it on the one hand, while on the other hand, in recent years there have been certain changes in the legislative sense, mostly in Anglo-Saxon law, and these changes resulted from the citizens' initiative to increase the degree of protection of official police dogs from more reasons. Certainly one of the reasons is because they are animals (therefore, there is a logical need for their "legislative" protection), and there is certainly an attitude that police service dogs "risk their lives" when performing the tasks that are put before them, and which refer to the prevention and resolution of the most serious crimes.

In this research, some of the significant aspects of this problem were considered, primarily in domestic legislation.

At the very beginning, a general legislative position related to dogs as pets in the domestic legislation was pointed out, where significant differences were immediately pointed out in relation to the legislative provisions related to dogs as official police animals.

The special focus of the work was related to the training of police dogs and dog handlers, quality training and certainly teamwork of the aforementioned is the only way to successfully solve complex tactical police actions.

In domestic legislation, the police service dog is treated as a means of coercion, but it can be seen that within the framework of tactical application by the police and the actions in which it is carried out, they often have a different "legal status", and therefore, we are of the opinion that their use in the legislative sense should have been adapted to their factual application. As an example, it can be stated that an official police dog is often used as a search dog, or as a dog that detects explosives or drugs, which is certainly not a means of coercion. In this research, we will not indicate potential legal solutions and proposals, we leave that for the continuation of consideration of this issue in one of the following researches.

At the end of this paper, a review was made on the use of service dogs in the USA. In the paper itself, the initiatives that were initiated as well as the changes in the legislation that followed were pointed out. The importance of this part of the work refers not only to indicating the actualization of issues of importance for police service dogs in the USA, but also to raising awareness about it in domestic circles that are interested in this topic, which

will inevitably follow, bearing in mind the increasingly dominant attitude of the world's population on animal protection issues.

The paper indicated that an attack on a police service dog in the USA is treated as an attack on an official, for which a significant penalty was provided by the criminal code, which was tightened in terms of penal policy in 2022 due to initiatives. We are of the opinion that the legislator should consider the mentioned issue and the legislative solution.

Then there is a particularly interesting question about the attitude towards a police service dog that, due to age or health conditions, ceases to be used for the purposes of performing police tasks, that is, the attitude towards a dog after "retirement". In England, there is an example of former police service dogs having annual incomes that usually cover veterinary expenses. Perhaps such a possibility would be too big a step for the domestic legislation, bearing in mind all the economic conditions in Serbia, but in some moral sense it would certainly be desirable to consider this issue as well.

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POLICIJSKI SLUŽBENI PAS KAO SREDSTVO PRINUDE

REZIME: Upotreba životinja u izvršavanju kompleksnih zadataka od strane policijskih službenika i vojnih jedinica, ne predstavlja nikakvu novinu u operativnom i zakonskom smislu, ali ova tematika nije dovoljno razmatrana u stručnim i naučnim krugovima, za šta ima prostora posebno ako se uzmu u obzir pojedine „novine" u zakonodavnom smislu koje su nastupile na međunarodnom nivou. Osnovna hipoteza ovog rada odnosi se na razmatranje pitanja upotrebe policijskog službenog psa. U okviru pomenutog razmatranja, fokus rada je grupisan u dve celine i to na onu koja

se odnosi na zakonodavno predviđanje upotrebe policijskog službenog psa u smislu obuke i upotrebe, dok se druga celina odnosi na njihovu taktičku primenu pri izvršavanju kompleksnih zadataka. Posebno se razmatra pitanje zakonodavnih novina i inicijativa koje su se pojavile u Američkom zakonodavnom sistemu, a imajući na umu sve dominantniji stav svetske populacije na temu zaštite životinja, za očekivati je da će se uskoro slična tema pokrenuti i kod nas. U ovom istraživanju pored analize, dedukcije i uporedne naučne metode, takođe je korištena i metoda specijalizacije. Na kraju ovog istraživanja u zaključnim razmatranjima iznet je osvrt na najznačajnije delove rada kao i na konkretne zaključke koji proizilaze iz ovog celogkupnog istraživanja, a svakako izneti su i lični stavovi autora.

Ključne reči: *policijski službeni pas, obuka psa i vodiča pasa, taktička upotreba, zakonska regulativa, sredstvo prinude.*

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THE INSTRUCTION TO THE AUTHORS
FOR WRITING AND PREPARING MANUSCRIPTS

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

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

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

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

General information about writing the manuscript:

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

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

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

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

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

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

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

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

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

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

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:

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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.
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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.