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S A D R Ž A J

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PERSONAL RIGHTS AND FREEDOMS – THE FORMS AND TRENDS OF PROTECTION

ABSTRACT: In the paper, the authors analyze the history, application and effects, respectively the achieved level of personal rights and freedoms as a part of human rights. The right to life is an elementary human right, a right that is natural, permanent, unchangeable, inalienable and no one has the right to dispose of another's life. The European Convention prohibits the death penalty or the states undertake not to carry it out striving to remove the death penalty from the law. Personal rights include the right to respect and inviolability of the physical, moral and spiritual integrity of every person. A large number of multilateral conventions advocate the prohibition of slavery and human trafficking. The right to marry, start a family and have children is included in the family law, as well as the inviolability of the apartment and property relations of the spouses regarding the property acquired in marriage and before marriage. The inviolability of the secret of letters is recognized by the European Convention on the protection of the acquired rights and guarantees for their respect. The electronic communication network represents transmission systems that, for the sake of security, integrity and confidentiality of communications, should apply adequate measures. The right to protection of personal data represents an additional guarantee of inviolability of human integrity.

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In the paper, there has been used a normative method, supplemented with an analytical and deductive methodological approach, as well as a basic quantitative data analysis and the provisions of the Criminal Code. The achieved level of human and minority rights cannot be reduced. The paper itself represents a contribution to a higher development and application of the equal regulation at both the national and international levels.

Keywords: *Human rights, marriage, security of e-communications, secret letters, inviolability of integrity.*

1. Protection of human rights and freedoms

The essence of the constitution is to ensure and provide adequate protection of human rights. The constitutional guarantee of human rights with an appropriate system of human rights protection has real significance.

Modern democratic constitutions provide for appropriate protective mechanisms and instruments for the protection of human rights when those are violated. There are some general principles of human rights protection, which include: a complex procedure for adopting and amending the constitution, which makes it impossible to easily change the constitutional guarantees of human rights; principle of constitutionality and legality, independence of courts, etc. There are also a certain instruments, as a means to achieve the goal, and forms of protection related only to human rights and freedoms. As a type of protection, protection before administrative bodies and protection before courts are mentioned. Constitutional-judicial protection is a special form of human rights protection, which is provided in parallel with forms of protection before the courts.

In addition to the primary form of protection that is realized within the framework of general control of constitutionality and legality, there are also some other forms of constitutional judicial protection of freedoms and rights guaranteed by the constitution, such as a constitutional appeal or the possibility of filing a lawsuit.

Some countries form special institutions (ombudsman) are being established, which in principle are not government bodies, and whose goal is the protection of human rights. Constitution of the Republic of Serbia advocates the principle of judicial protection of constitutional freedoms and rights. Every citizen has the right to court protection if he is denied or violated any of the rights guaranteed by the constitution. Every person has the right to remove the consequences (compensation) that arose from non-application

of rights. The novelty is the explicit constitutional provision that citizens have the right to turn to international institutions for the protection of their freedoms and rights guaranteed by the Constitution.

Of the usual forms of protection, in addition to judicial protection, constitutional judicial protection of the freedoms and rights of citizens is foreseen, in a classic way – through the assessment of the constitutionality and legality of general legal acts, as well as by deciding in other types of jurisdiction – on constitutional appeals submitted to the Constitutional Court.

2. The inviolability of human life

The elementary human right is the right to life, that is, the inviolability of life, being recognized in all constitutions (Constitution of the Republic of Serbia, 2006). The human right torespect life is at the center of the human rights protection system. The human right to life is also guaranteed by international regulations on human rights (UN Declaration A/RES/217, 1948). In the International Pact on Civil and Political Rights (ICCPR/1966), the right to life is designated as an innate right of every human being (International Pact on Civil and Political Rights – ICCPR 1966/76).

The right to life is natural, permanent, unchangeable, inalienable and no one has the right to dispose of another's life, that is, no one can take it when and how they want to (Kuzmanović & Dmičić, 2002, p. 130). Along with the International Covenant on Economic, Social (Šipovac, Logarušić & Šipovac 2019, pp. 105-114) and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR), the ICCPR is a part of the International Human Rights Law.

The right to life can be absolute or not. Absolute character, in application, can be in that countries where the death penalty is prohibited by the constitution. From the perspective of the legal regulations of individual countries, the application of the death penalty is foreseen, ie legally regulated. The development of human rights and freedoms in the world contributed to the tendency to increase the number countries that do not apply this sanction.

The number of countries that strive to maintain is also increasing the inviolability of the right to life by strict and explicit prohibitions of the death penalty. A certain number of countries, which failed to omit the death penalty from the national legislation tend to, in this way pronounced sentences will not be carried out.

The European Convention from 1950 protects the right to life of every human being. National laws guarantee the right to life of people, unless there

is a judgment by which he was convicted of a crime, which is defined by the provisions of the law.

International legal regulation, that is, the constitutions of individual countries do not explicitly mention the right to the life of each person, but they assume it, either by guaranteeing the inviolability of the body integrity, whether by unconditional protection of life, i.e. absolute prohibition of the death penalty (Bataveljić, Logarušić & Šipovac, 2019, p. 152). The inviolability of life protects the right to life of every person, from his birth until his death.

In connection with this right, numerous issues arise controversial issues, primarily due to the existence of new biomedical possibilities. The greatest attention and controversy is caused by abortion, i.e. violent termination of pregnancy with the sacrifice of the fetus.

The question of the inviolability of life also includes the application of euthanasia, i.e. mercy killing or taking the life of a human being at his/her own request, turning off the life support apparatus of a person in a coma, as well as procedures for cloning of living beings, transplantation of certain human organs and other methods.

3. Respect for physical and psychological integrity

The right to respect and to inviolability of the physical, moral and spiritual integrity of every person is one of the most important personal rights. Certain rights belonging to this group have the status of absolutely protected rights. The Universal Declaration of Human Rights (1948) defines that no human being shall be cruelly tortured or subjected to inhuman or degrading punishment.

International treaties, conventions and documents on human rights provide for the prohibition of torture, including the prohibition of forced labor (Škorić, 2019, pp. 377-390). The universal prohibition of this kind of behavior (torture), no matter where it happens and by whomever it is carried out, is firmly established in international law.

A significant number of multilateral conventions refer to the prohibition of slavery and the prohibition of human trafficking. The conventions were concluded at the beginning of the 20th century and after the First World War, when intensive international regulations were implemented in order to abolish and prohibit the institution of slavery, which brutally dehumanizes and humiliates humans, depriving them of their human rights and freedoms. In democratic, modern states, the constitution and corresponding legislation

expressly prohibit slavery and positions similar to slavery, but it cannot be denied that the institution of slavery still exists.

4. The right to marry, start a family and have children

Family law with an element of foreignness defines that the body of the Republic of Serbia is competent to conclude a marriage if one of the spouses is a citizen of the RS. A marriage validly concluded in another country is recognized in our country if it does not conflict with the public order of the Republic of Serbia.

International jurisdiction and determination of the relevant (competent) law with an element of foreignness in marital relations can be the citizenship, domicile or regular residence of one of the spouses who left the country after the termination of the marriage union. Which court will be competent for divorce depends on several elements, such as the place of marriage, joint residence or regular residence abroad.

Most modern constitutions define marriage as a useful social institution and protect it with their provisions (Krstinić, 2019, p. 67). The founding of a family and the birth of children result from marriage, so the European Convention for the Protection of Human Rights and Fundamental Freedoms establishes the right to marry by stipulating that men and women of appropriate age have the right to marry and found a family in accordance with national laws, which regulate the exercise of this right.

Special attention is paid to the protection of the family, due to the importance that the family has for every society (increasing the number of the population through births). States develop policies related to marriage, family and children, because these are not private matters of individuals. The state must not undertake any measures that would harm the institution of marriage, family and children. Modern constitutions enable the state to adopt national regulations and provisions that regulate: marriage and family; conditions for entering into marriage; obstacles for entering into marriage; rights and duties of spouses; dissolution of marriage and the consequences of that dissolution; family protection; education and care of children etc.

The regulation of marital relations and the birth of children are defined by the provisions of the constitution from a general point of view, while more detailed regulation is entrusted to the corresponding laws, regulations etc. Competent authorities and institutions can participate in the regulation of elements that affect marriage and family growth, only if this area has been previously regulated by state norms. Slavery is defined as the social or legal

status of an individual (the slave), who has been deprived of their human rights, and are owned by another person or community (Law on Ratification of the International Covenant on Civil and Political Rights, 1971).

5. Inviolability of the home

Property relations of spouses regarding property acquired during marriage, as well as those before marriage (marital property regime) contain special norms of family law. Regarding the division of property acquired in marriage, which is most often initiated after a divorce, if an amicable divorce has been agreed, the court enters the agreement of the spouses on the division of joint property in the disposition of the judgement on divorce. The provision of the Constitution guarantees the inviolability of the apartment, preserves its privacy and integrity, and respects the ban on the possibility of other persons entering private premises.

International regulation, (International Pact, ICCPR, 1966/76; UN Declaration, 1948) from a legal point of view, it does not allow entering someone else's apartment without the presence of an official and two witnesses, it does not allow interference in private life, especially now in the era of information technology development, it is not allowed to read, disclose, receive or send other people's information (message) that can disrupt family relationships. The inviolability of the apartment implies respect for the right to privacy, i.e. respect and unhindered development of private and family life, personal house or apartment and correspondence of all kinds.

The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights define that "No one should suffer illegal and arbitrary interference with private life, housing, or attacks on people's honor and reputation contrary to the provisions of the law." The provisions of the European Convention on Human Rights and Fundamental Freedoms define basic guarantees and protect this range of rights.

The inviolability of the apartment is inseparable from personal freedom. Respect for the inviolability of the person ensures the security of man and his freedom.

In accordance with the scope of the right to the inviolability of the home, it should be said that the home is inviolable for public authorities and for third parties, who are not its users. Limitations of this right are admissible only in cases and under conditions which are in accordance with the principles of a free democratic order, i.e. someone else's home may be entered without a court order only in the case of the immediate capture of the perpetrator of the

crime (Criminal Procedure Code, 2021). and for the purpose of saving people and property (Matijašević Obradović & Ilić 2018, pp. 92-109).

6. Confidentiality of letters and correspondence

Sending and receiving letters, conversations (correspondence) and their inviolability and protection are guaranteed by the provisions of the European Convention from 1950. Secrecy of letters and correspondence as an important personal (fundamental) right, i.e. the right which every person is constitutionally guaranteed the right to protect the secrecy of private letters and their content. The state administrative body and other persons are obliged not to violate legal rules in their work, when applying legal regulations, that is, to respect the confidentiality of documents guaranteed by the provisions of the 2006 Constitution.

The secrecy of the letter includes, apart from the mentioned telephone and computer communications, ordinary telephone conversations relying on the constitutional provisions on human rights (Constitution, art. 41) and other provisions of the Constitution that indirectly affect legal regulations, as defined by the provisions of the Handbook and the EU Charter (Handbook, 2014, 63-64), (EU Charter, 2017).

7. The right to protection of personal data

The development of information and communication technologies has opened new ways of information flow from all areas of life. Personal data is stored in electronic files and can be misused in various situations. In order not to misuse data and endanger the private lives of individuals through the development of computer technologies and communications through the application of automatic data processing, when public authorities and their services can misuse the data they have on citizens, the Council of Europe adopted in 1981 the European Convention on the Protection of Individuals in relation to automatic processing personal data.

In order to improve the protection of personal data, a special Advisory Consultative Committee was established, whose main task is to provide assistance in the implementation of this Convention. The Committee of Ministers of the Council of Europe issued several recommendations with the aim of protecting the privacy of automatically processed data, among which are: data of a medical nature from 1981, data on police files from

1987, employment data from 1989, protection of personal data in the field of telecommunications, especially telephone services from 1995 etc.

The application of the right to the protection of personal data protects the integrity of a person, and all actions related to data collection are regulated by relevant laws.

Data can be protected in three ways, namely: 1) by ensuring the right of everyone to be apprised with the collected personal data that relate to him; 2) by guaranteeing the right to judicial protection in case of misuse of said data; 3) banning the use of collected data outside of the purpose for which they were provided, i.e. by prohibiting misuse.

8. Protector of Citizens

The Protector of Citizens, as a new constitutional institution and an independent state body, was established to protect the rights of citizens. The ombudsman is one form of protection of citizens' rights against illegal acts and actions of state administration bodies.

The provisions of the Constitution of the Republic of Serbia established two control bodies of the Parliament, the Protector of Citizens, responsible for controlling the work of the state administration, and the State Audit Institution, responsible for controlling the work of public funds in the country. The Protector of Citizens (ombudsman) represents a special type of control of public institutions (state administration).

In many countries, it is achieved by introducing the institution of ombudsman (ombudsperson), whose task is to protect the rights of citizens. From a historical point of view, the institution of ombudsman was introduced in Sweden at the beginning of the nineteenth century by the Constitution of 1809. The turmoil created in the post-feudal society and the struggle between the Swedish absolutist king and the parliament as the representative of the people led to the need to establish the institution of a special commissioner (ombudsman) who was in charge of monitoring how the king and the administration implement the laws passed by the Swedish Parliament.

The ombudsman submitted a report on the findings to the Parliament, and the representatives of the Parliament could ask questions about trust in the king's ministers, that is, about their dismissal. The essence of the aforementioned powers of the ombudsman have remained until today with numerous changes to that institution depending on the legal system of a particular country. Although basically the ombudsman remained a commissioner of the parliament in charge of monitoring how the administration and the executive

power apply the laws, today he is an institution whose main task is to protect the rights of citizens from illegal and improper work of the administration. The effectiveness of the ombudsman in protecting the rights of citizens and controlling the administration is based on the ability to draw the attention of the public and the parliament to citizens' complaints based on the reports he submits to the parliament. The very fact and awareness of the ombudsman's supervision exerts a positive influence on the entire administrative system of the country.

The Protector of Citizens has the task of controlling state administrative bodies and protecting the property and other rights of citizens (Law on the Protector of Citizens, 2021).

The absence of coordination between national legislations on citizenship leads to the problem of positive and negative conflict of citizenships. Persons with two or more citizenships are called bipatrides and polypatrides, while persons without citizenship are apatrides.

9. Conclusion

Efforts to preserve the achieved level of personal rights and freedoms are realized through the application of international and national legal regulations. International conventions, declarations and forms of their ratification contribute to a higher level of protection of human rights and the inviolability of life. Modern democratic constitutions strive to protect the right to life, and some still contain provisions on the death penalty. The realization and respect of the right to personal integrity includes the inviolability of physical, moral, spiritual, physical and psychological integrity and should be defined by precise constitutional provisions. Getting married means starting a family and having children.

The international provisions of the European Convention protect rights and freedoms, and within them also the conclusion of marriage, which is regulated by the provisions of national constitutions. The matrimonial property regime of acquisition and division of property is regulated by special norms of family law. The inviolability of the apartment, entry without a written court decision and other actions are guaranteed by the provisions of the Constitution. Secrecy of personal letters and other means of communication is one of the personal rights guaranteed by the Constitution with its provisions on the protection of the secrecy of letters and their contents from other third parties and public authorities. New ways of information flow, including personal data, move through Internet networks and electronic files and can be

misused. The European Commission on Personal Protection and the Advisory Consultative Committee strive to improve the protection of personal data and help implement the automatic processing of personal data. The control of the work of state administrative bodies towards citizens, the regularity of treatment and the proper application of positive legal regulations is entrusted to the protection of citizens-ombudsman.

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LIČNA PRAVA I SLOBODE – OBLICI I TENDENCIJE ZAŠTITE

REZIME: Autori u radu analiziraju istorijat, primenu i efekte, odnosno dostignuti nivo ličnih prava i sloboda kao deo ljudskih prava. Pravo na život predstavlja elementarno pravo čoveka, pravo koje je prirodno, trajno, nepromenljivo, neotuđivo i niko nema pravo da raspolaže životom drugoga. Evropska konvencija, zabranjuje smrtnu kaznu ili se države obavezuju da ih neće izvršavati i da će nastojati da smrtnu kaznu uklone iz zakona. U lična prava spada pravo na poštovanje i nepovredivost fizičkog, moralnog i duhovnog integriteta svakog lica. Veći broj multilateralnih konvencija zalaže se za zabranu ropstva i trgovinu ljudima. Pravo na sklapanje braka, zasnivanje porodice i rađanje dece ubraja se u porodično pravo kao i nepovredivost stana i imovinski odnosi supružnika povodom imovine stečene u braku i pre braka. Nepovredivost tajne pisama priznata je Evropskom konvencijom o zaštiti stečenih prava i garancija za njihovo poštovanje. Elektronska komunikaciona mreža predstavlja sisteme prenosa koji radi bezbednosti, integriteta i tajnosti komunikacija, treba da primene adekvatne mere. Pravo na zaštitu podataka o ličnosti predstavlja dodatnu garanciju nepovredivosti integriteta čoveka. U radu je korišćen normativni metod, dopunjen analitičko-deduktivnim metodološkim pristupom, kao

i osnovna kvantitativna analiza podataka i odredbe Krivičnog zakonika. Dostignuti nivo ljudskih i manjinskih prava ne može se smanjivati, te rad predstavlja doprinos višem razvoju i primeni pravne regulative na nacionalnom i međunarodnom nivou.

Ključne reči: *ljudska prava, sklapanje braka, bezbednost e-komunikacija, tajna pisma, nepovredivost integriteta.*

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THE INFLUENCE OF FAMILY AND SCHOOL IN RECOGNIZING COVID 19 AS A SECURITY RISK

ABSTRACT: In this paper, the authors emphasize the importance of awareness of security culture, and define its essential characteristics. By using such an approach, they analyse the phenomenon and features of one of today's greatest security risks – COVID-19. In addition, the authors also deal with analysing the security culture through the prisms of school and family, as the fundamental institutions having an influence over the education and upbringing processes. They observe security culture primarily through the ways in which these institutions react to the new security risk resulting from COVID-19, which has become one of the greatest security threats all over the world. It means that nowadays people are preoccupied with finding the ways of preserving both physical and mental health, and protecting themselves, and, at the same time, maintaining a normal lifestyle and daily functioning, without fear and uncertainty.

Keywords*: security culture, family, school, educational system, COVID-19.*

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1. Introduction

Security is no longer only a synonym for defending a country's territory against external attacks, but also for protecting the community and individuals from all forms of threat. With regard to threats to security, they refer to the existence of phenomena that lead to impairment of the integrity of humans, the integrity and sovereignty of state and its institutions, or of mankind in general. The causes of impairment of security on a local and global scale are diverse (Bjelajac 2017, p. 39). The modern security concept overcomes the need for an exclusively rational approach, opening the possibility of culture-specific analyses. More precisely, with at least several of its dimensions, culture is present in contemporary security, even though it defies a clear definition, being in the strategic, educational, cultural and symbolic sense interwoven with the security concept (Injac 2016, p. 13). The recognition and interpretation of links between the culture and security concepts represents an attempt to not only understand the processes taking place between these two concepts, but also develop a methodological apparatus which would enable their comprehensive analysis and explanation of a new phenomenon which bears the name of security culture.

The first security culture knowledge and concepts are acquired in the family, and further built upon during education and supplemented in the workplace, "they are shaped by cultural identity and patterns, and immediate surroundings, and self-reflected by the character and development of individuals' positive personalities" (Stajić, Mijalković & Stanarević, 2013, p. 45). As a discipline, security culture has been increasingly gaining significance, by contributing to understanding the behaviour of security actors. As a discipline, security culture may provide the guidelines, means and skills of managing contemporary securityrelated processes. Its role is particularly important on the individual, social and national levels, and it becomes evident through raising social awareness of security challenges and threats (Injac, 2016, p. 12). One of the contemporary and, we might say, one of the greatest security challenges of today is the COVID-19 virus, which has affected all social spheres, including the family and education, i.e. school.

As regards the role of schools in fostering security culture and the development of education in the modern sense of the word, it is connected with new technologies which have become an addition to the existing curricula, in particular in our everyday life pervaded by COVID-19. Teachers and students alike are faced with a real challenge related to integrating information technologies into traditional teaching. The complex and dynamic conditions

of the contemporary social context impose a situation in which the family and school cannot function without one another, i.e. without the other party's engagement (Zuković 2012). Namely, a family is a social group which plays a decisive role for its members and has a powerful impact on their development. It also represents the point of merging of elementary behavioural patterns and knowledge of security culture, while on the other hand the family itself can be confronted with many challenges, such as violence and various deviant forms of behav-iour. The most recent challenge that the family is confronted with is the presence of COVID-19. What are the ways in which the family fights this challenge?

2. Security and culture

"Security is a state in which countries find there is no risk of a military attack, political pressure or economic coercion, so that they can freely develop and progress." (Publication des Nations Unise 1986). The essence of security is that through it society can achieve a certain aim, which consists, primarily, of protecting its own survival and progressive development in accordance with its potential. Miletić (1997) defines security as "a state established, maintained and improved through legally regulated and secured social relations in a country, which enables effective protection of the state and its citizens from all (external and internal) unlawful acts (activities) which threaten the constitutional system, sovereignty, independence and territorial integrity of the state, the work of government authorities, the performance of economic and social activities, and the exercise of the freedoms, rights and obligations of man and citizen" (p. 13). Stajić (2011) expands the quoted definition stating that security represents the state of absence of threats to the international community and neighbours, of all natural, technical-technological, psychological and mental threats, all forms of threats to health, social and cultural development, and a state of absence of hazards to man's environment and nature in general, etc. (pp. 26-27). In essence, security is all that tends towards a general support, facilitation, maintenance and progress of man, society and nature and everything that surrounds man. It is a positive category which does not create material goods and prosperity, but which certainly enables their creation. It is changed, transmitted and received in the process, which is carried out by individuals, groups, countries and the international community (Stajić, 2011, p. 30).

Interdisciplinarity has created frameworks which bring together the apparently unrelated phenomena of culture and security. The broadness of the

concept of culture has created a space for its integration with a large number of social phenomena. Namely, it is a fact that the need for security as a human concept is fostered by culture itself in its broadest sense. The challenges of contemporary society and social reality have increasingly been creating the need for broadening the framework of understanding the complex security phenomena which are seemingly incompatible – culture and security. On the other hand, Stajić, Mijalković and Stanarević (2013) think that security and culture are concepts which have easily found ways to complement each other and develop a certain relationship. In that regard they state that the interconnectedness and causal relationship of these two concepts becomes clear if culture is defined as a set of universal values on the basis of which man determines his position in society and the world in general, and security as protection of these values (p. 42).

Đorđević (1989) defines security culture as "part of the general culture of an individual, a particular area or society. A set of ideas from the field of security (the essential values and legacies which are the subject of attack and protection, the methods and forms, as well as the actors of threats) which make individuals, areas and society more capable of identifying the methods, forms and acts of threatening, as well as the actors of those activities, regardless of where and in what ways they may manifest themselves" (p. 23).

In order to successfully form and improve security culture, it is essential to include all the factors, i.e. actors and institutions dealing with security issues, in educational processes. The role of the family and school is decisive in that process and is manifested in the way in which a child should understand its surroundings, identify and define indirect and direct dangers, risks and threats, and in the ways of manifesting its reactions and choosing adequate modes of action (Bjelajac, 2017, p. 39).

Security culture implies conscious working with the aim of preserving an existing, or creating a more favourable security environment or better living conditions. It is acquired during the development of the individual and the society they live in, and further built upon, changed and transmitted to others. This process is carried out by individuals, family and society as a whole, who exert influence by transmitting the already formed patterns and values of culture, and create conditions for the acquisition of new values. Stajić, Mijalković and Stanarević (2013) define the basic characteristics of security culture, indicating that it is part of the general culture of an individual, social group, etc., and that it includes attitudes, knowledge and skills in the field of security in the broadest sense, relating to the spheres of society, nature and technology. The attitudes refer to the positive approach based on the need to

protect oneself and others, the state and the international community, while the knowledge refers to recognizing and explaining the forms and actors of threats, and skills to the methods and activities of prevention and repression of security threat forms. It also has a preventative role, is the attribute of both individuals and the global society, and its aim is to preserve the values of a society, protect and minimize the consequences of all forms of threats – from the individual to the global level (pp. 44-45).

3. COVID-19 – the security challenge of today

From December 2019 to February 2020, a new breed of the Corona virus was formed, named SARS-CoV-2. The desease caused by this new virus appeared for the first time in Wuhan, in the Chinese Province of Hubei, at the end of December 2019. In January 2020 the epidemic developed in the People's Republic of China and spread to one part of the world. In order to contain the spread of this virus in countries without efficient health care systems, on 30 January 2020 the World Health Organization declared an emergency situation of international significance. The virus kept on spreading and hit all the continents, which led the World Health Organization to declare a pandemic on 11 March 2020. In view of the fact that the COVID-19 pandemic became a new security risk, this demanded a reaction of the state, which enacted a number of decisions and regulations with a view to containing the spread of this virus. As in many other countries, the emergency situation was declared in the Republic of Serbia as well, and the measures and regulations that were passed have radically changed the lives of all its citizens (Krstinić & Počuča,, 2020, pp. 173-174). Namely, within a very short period of time, the health crisis brought about by COVID-19 hit the whole world, affecting all spheres of human life, and creating the highest security risk of today. COVID-19 has caused a suspension of ordinary work activities, which has resulted in conditions of social isolation we have been living in for a long time now. People have been deprived of their daily life routines, which has led to emotional and psychological imbalance and depression, anxiety, confusion, anger and fear of uncertainty which comes with every new day (Britvić, 2020).

Corona viruses are a large family of viruses which cause different diseases of the respiratory organs, from a common cold to considerably more serious and severe diseases. The spread of COVID-19 among the population is still in progress, its transmission is quite high, and the final outcome of this epidemic is still uncertain. The symptoms of COVID-19 infection develop

after the incubation period, after five days on average. The period from the appearance of the first symptoms to the fatal outcome in the infected is in the range from 6 to 41 days. This period depends on the patient's age and the condition of their immune system. The most common reported symptoms are high body temperature, coughing, loss of the sense of smell, loss of appetite, headache, a sore throat, a feeling of fatigue, dyspnoea, i.e. the feeling of shortness of breath and difficult breathing. A large number of patients also develop pneumonia, which requires their hospitalization as the patient's condition may be aggravated, i.e. it may result in acute myocardial injury and chronic damage to the cardiovascular system (Vasilj & Ljevak, 2020, p. 11). According to some authors, experiences from Italy indicate that as many as 10% to 25% of the hospitalized patients required connection to mechanical ventilation (Truog, Mitchell & Daley, 2020, p. 1973).

The essential way of spreading the infection is its transmission from person to person. It should be pointed out that besides transmission from sick people, the virus is also transmitted from asymptomatic patients, and persons in the incubation phase. As a result, in order to prevent the infection from spreading, close personal contacts in the population should be reduced to a minimum. This virus is stable and virulent for 72 hours on plastic surfaces, 48 hours on metal, and 24 hours on cardboard, while its virulence on copper surfaces lasts up to four hours (Skitarelić, Dželalija & Skitarelić, 2020, p. 5).

New scientific and epidemiological information on COVID-19 has been arriving continuously, and given that the world as a whole is interconnected by modern technologies, it is quite readily available. As a result, scientists and clinicians have been constantly learning new facts about this virus, which are full of different and, we could even say, contradictory information. For that reason, the story of COVID-19 is neither complete nor finished. However, both scientists and clinicians emphasize social distancing as the most effective method of preventing the spread of the COVID-19 virus.

As a security risk of today, COVID-19 represents an invisible enemy which lurks at every step, being at the same time unpredictable, as we do not know what consequences it will have for each one of us. In order to prevent it, researchers should cooperate on a global scale, but this also applies to the whole society. In view of the fact that the family is the most significant social group, which is the main factor in the formation of personality, it is important to analyse the ways in which the family reacted to the security risk posed by COVID-19.

4. The response of schools to the security risk caused by COVID-19

The COVID-19 pandemic has affected the educational process worldwide. There has been a massive closing of educational institutions – schools and universities, which has not only affected the pupils, students, teachers, families, but has had much more sweeping economic and social consequences (Stepanović, 2020, p. 183). The students' switch to online learning has highlighted a certain inequality in the educational system, from the fact that a large number of children rely on school in terms of support it provides through meals and a safe environment, to a sort of digital division. In other words, children without adequate devices and an internet connection are completely deprived of education (Mustafa, 2020, p. 6). The Republic of Serbia overcame this obstacle by broadcasting the educational contents which are adjusted to the curricula on national-frequency TV, so that they are available to all primary school pupils. However, this method has demonstrated its inadequacies, due to a lack of teacher-pupil interactions. Besides that, the students' state presents an additional problem, in terms of whether they can organize their time, whether they are sufficiently motivated and capable of independent studying. With a view to overcoming the aforesaid problems, there is also the possibility of using the Microsoft teams and Zoom applications, which enable teacher-pupil interactions, which greatly enhance the educational process (Stepanović, 2020, pp. 183–186). On the one hand, COVID-19 has thoroughly impaired the traditional educational methods, and on the other, it has become a driving force for educational institutions, which are now coming up with innovative solutions with a view to raising the quality of education. However, in addition to education in the sense of following and mastering the learning material, we think pupils must be informed of COVID-19. It is essential for children to be aware of the real situation they are living in, because in that way they will also be aware of the security risk brought about by COVID-19. This will lead to a much lower potential for damage to both physical and mental health.

As regards the role of school in promoting security culture, Počuča (2017) is of the opinion that it has been extremely reduced by "efforts to ensure its own safety in the context of the right to uninterrupted good quality work, which would also provide a more positive final outcome, which is an educated and well behaved student" (p. 127). Namely, it is a generally accepted attitude nowadays that the school cannot educate without providing an upbringing. In addition, the traditional conception is accepted according to which education is viewed as the skill of introducing children to acceptance of the norms of a

specific society. In the education process, young people acquire knowledge of the values and customs that a society is trying to promote, on contents that will be given priority in the transfer of knowledge and the means used to accomplish these goals (Potonjak & Šimleš, 1989, p. 126).

In modern times, schools and universities not only contribute to the expansion of man's intellectual potential and world view, but also prepare new generations of people, which will take part in a country's economic life (Gidens, 2007, p. 496). It is for this reason that the acquisition of knowledge, skills and views in the field of security culture is particularly relevant. Modern security risks and threats, protection, security activity, etc., represent a complex of problems the creation, but also the resolution of which involves, in their own ways, all members of a social community. Educational needs relating to this area must be viewed as a special kind of needs, with a different subject matter, methods and organizational forms. In that sense Bjelajac (2019) points out that the introduction of security culture into the educational system would, in an effective way, prepare the young for adult roles, and adults for other roles as well (p. 241).

5. The response of the family to the COVID-19 security risk

The presence of a devoted and healthy family creates a precondition for the existence of a healthy and progressive society (Počuča & Šarkić, 2019, p. 66). Of special importance is the fact of family being irreplaceable for the emotional life of man, and the achievement of his emotional and mental stability. A healthy family atmosphere, filled with love and intimacy, is a crucial condition of a person's socialization (Đorđević, 2006, p. 102). Besides that, it is the place of acquiring elementary patterns of behaviour and knowledge in security culture.

The contemporary family is constantly under the influence of everything going on in society at large, and as a result it faces the same conflicts as contemporary society. In other words, the social dynamics is reflected on the family dynamics as well (Zuković, 2012, p. 39). The changes caused by the occurrence of COVID-19 have developed at a very high pace in the past year and have affected all segments of society, thus contributing to the development of a state of general insecurity in society in general, and in the family as well.

In this new situation, the family's primary function is to provide protection to its members. During the lockdown, the family becomes the only shelter and represents a form of primary protection, of physical and mental health alike. This is particularly emphasized now that the family is also involved

in protecting its members who have contracted COVID-19. The family is also confronted with the changes which include an adjustment of habits and behaviour, as well as a reorganization of shared space and time. In this sense the challenges are all the more prominent the smaller the living area, or the more members it has. Tolerance and patience, and observance of the needs of all family members should become a priority. However, it is inevitable that some families experience an additional rise in tension and uncertainty due to economic consequences.

Furthermore, the new situation has brought about negative forms of behaviour, which are manifested through domestic violence. Peitl et al. (2020) point out that a large number of people have been negatively affected by the introduced measures of lockdown and restriction of movement, which led to conflicts and dissatisfaction within the family. Thus those infected with COVID-19 feel the blame due to the effect of contagion and stigmatization directed towards their families, while with the rise in the number of new cases, there is a growing unease and anxiety in the population, which indicates the need for providing psychological and psychiatric support to patients, and medical staff as well. In addition, families also experience negative, deviant forms of behaviour, like violence. Closed spaces, economic instability, inability to carry out daily activities and an excess of free time have resulted in an increase of domestic violence, in particular directed to children (p. 194).

In order to avoid a state of tension and reduce stress levels in individuals, we should talk openly about the current situation and in the best possible way find the solutions which suit the needs of the family. Otherwise, this could lead to major instabilities on the level of the whole community, i.e. the state. In that sense, Williams (2008, p. 279) points out that the pandemic may result in the occurrence of social unrest, which could lead to destabilizing the state. More precisely, this could lead to a loss of trust in the state if it fails to provide the primary level of protection from the disease, and to marked social inequalities, which in turn lead to public riots, which could result in violence. Furthermore, if most of the people cannot go to work, public services may be at risk, in the sense that they could disrupt the functioning of the state as a whole. If those consequences caused by the pandemic occur, the state will not be able to preserve its security. We think this is exactly the situation taking place in our country at the moment. Namely, inadequate information, distrust and fear often lead to different reactions of the community to the current situation. Very often on social networks and in the media we can find unverified information about COVID-19 and the related conspiracy theories, which can raise the feeling of insecurity and fear, which causes a spread of panic among

the population. Panic is excessive fear, expressed to a much higher extent than the situation warrants, which leads to inappropriate behaviour in the sense of marked fear and concern for our own health and that of people closest to us, problems with concentration and sleep, deterioration of chronic medical conditions, an increased consumption of tobacco, alcohol etc. Contrary to panic, there is another problem which can have dire consequences, which is a total denial of fear, or underestimating of the dangers involved, with such persons acting irresponsibly, exposing to risk both themselves and others (Miloš & Nezirević, 2020). This kind of behaviour is manifested through frequent protests and mass gatherings, which represent a trigger for the virus' further spread and survival.

In view of the recent changes in the family resulting from COVID-19, we can see that they have inevitably affected the contemporary family appearance. On the one hand, negative changes are taking place, which are manifested through domestic violence, but on the other hand, there is a strengthening and a growing importance of the role of the individual and family alike. In the modern challenging conditions, the family has largely succeeded in preserving its original values, which are reflected in the connectedness of individual and society, so that we can describe the present as a time of great challenges and temptations that the family, and in turn the society as a whole is confronted with, in view of the fact that the family represents the basic cell of society, and that the future of the entire society relies on its condition.

6. Conclusion

In view of the fact that COVID-19 represents a direct security threat, we think it is essential to design a strategic plan with the aim of containing its further spread. This requires the collaboration of all of us, while institutional and systemic support is of paramount importance. The pandemic has affected all aspects of life, so that the educational process has for a year now been relying on the use of information technologies, which have become indispensable for the functioning of the socalled "virtual classroom". This process required the engagement of the family, in the sense of including parents in the children's school activities through talking about their school obligations, providing guidance and support.

Apart from the regular curricula, we find it is necessary to lay particular emphasis on security culture analysis with a view to raising awareness of its significance. In other words, COVID-19 represents a ubiquitous, serious and dangerous security risk that all the inhabitants of our planet are exposed to.

However, not all people react in the same way to this security risk, which is, we might say, completely absurd. Physicians have for months now been working under extremely difficult conditions, and have witnessed many family tragedies caused by this very virus, while on the other side part of the population does not pay sufficient attention to this security risk, organizing parties, various gatherings and protests, thus unnecessarily exposing to risk both themselves and others.

The country is, on the one hand, confronted with COVID-19, which can cause many health problems, and on the other hand, with its citizens who do not understand the seriousness of the newfound situation in terms of the risks they are, or may be exposed to. This is exactly why we should lay emphasis on the security risk posed by COVID-19 through adequate education with the aim of overcoming this crisis situation.

We think we are all confronted with certain crises which we can call challenges, and that they are part of life. Most of these crises are surmountable with adequate support. It is therefore our opinion that by joining forces we could manage and overcome the crisis caused by COVID-19.

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UTICAJ PORODICE I ŠKOLE U PREPOZNAVANJU KOVIDA 19 KAO BEZBEDNOSNOG RIZIKA

REZIME: U okviru rada autori ističu značaj poznavanja bezbednosne kulture prikazujući njene osnovne karakteristike. Pri tome analiziraju pojavu i odlike jednog od najvećih bezbednosnih rizika današnjice – kovida 19. Pored toga autori se bave i analizom bezbednosne kulture kroz prizmu škole i porodice kao fundamentalnih institucija koje imaju uticaj u procesu

obrazovanja i vaspitanja. Bezbednosnu kulturu prevashodno posmatraju u načinima na koji ove institucije reaguju na novi bezbednosni rizik izazvan kovidom 19 koji je postao jedna od najvećih bezbednosnih pretnji u čitavom svetu i preokupacija sadašnjice u smislu kako sačuvati fizičko i mentalno zdravlje, kako se zaštititi, a pri tome normalno fukcionisati i živeti, bez straha i neizvesnosti.

Ključne reči: *bezbednosna kultura, porodica, škola, obrazovni sistem, kovid 19.*

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PROTECTION OF CONSUMERS RIGHTS IN LIFE INSURANCE CONTRACTS

ABSTRACT: Life insurance is a special type of activity exerting a strong influence on a country's social and economic structure. Its main field of interest is human life. Life insurance contracts are founded on the basis concept of the legal position of an insured person as the weaker contracting party either due to his/her knowledge of the insurance service and the circumstances surrounding it or due to his/her negotiating position and the financial means put at his/her disposal. The insurer is a trader and professional, which cannot be said for the insured person, who, accordingly, should be ensured protection within the current legal framework. In that sense, it is essential the security and protection of the insurance beneficiary to be provided against all the risks and irregular actions which can be anticipated and prevented. In accordance with the importance of its topic, the paper touches upon the term and characteristics of life insurance contracts. It also includes the definition of life insurance and legal aspects of life insurance contracts, all of which to be followed by a detailed elaboration on the selected topic of the paper, which is reflected in its subtitle – the analysis of consumers (insurance beneficiaries) protection in insurance contracts generally speaking and in life insurance contracts in particular.

Keywords: *life insurance, the insurance contract, the consumer protection law, the law of contracts and torts, Republic of Serbia.*

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1. Introduction

In the business activities of insurance companies, the protection of insurance beneficiary has been set as a priority, Art. 13 of the Insurance Law (2014) stipulating that "insurance activity is supervised for the purpose of the protection of rights and interests of insurance beneficiaries". According to the Insurance Law (2014), insurance beneficiaries are "insured persons, insurance contractors, insurance beneficiaries and third injured persons" (Art. 15).

The term of an insurance beneficiary itself spans a category of persons beyond consumers as, according to Art. 5 of the Consumer Protection Law (2021), a consumer is defined as "a natural person acquiring goods or services in the market for the purposes not intended for the person's own business or another commercial activity", or, as stated by Petrović Tomić (2014), "in various EU directives, a consumer is defined as a natural person getting or using some goods or services for non-professional purposes" (p. 45). Thus, "the management of an insurance company shall act in the company's best interest by seeking to provide protection for an insurance beneficiary" (Korica & Zarubica, 2021, p. 76).

We may say that "modern insurance, as a form of growth and development risk management, appeared with the development of private ownership" (Petrović, Njegomir & Počuča, 2013, p. 731) and that "throughout insurance development, the basic function of insurance has not changed, which function is the protection of property and persons" (Počuča & Krstinić, 2013, p. 33).

It was as late as in the 1970s that the "contractual insurance law assumed a certain dynamics in its development. The new codifications and amendments to laws in numerous European countries point to a shift of the legislator's focus from the provision of protection for the insurance against a fraudulent behaviour of the insurance contract to the protection of the rights of the consumer as the weaker contracting party" (Fontaine, 2011, p. 35). According to modern authors, "the need for special regulation of the position of persons facing the insurer is founded on the method of conclusion of an insurance contract, but also on the fact that, on one side, there is a person professionally dealing with risk management, whereas, on the other side, there is a person – the insurance contractor – without sufficient legal or professional knowledge" (Tereszkiewicz, 2013, p. 235). Also, "the average users of the insurance service observe an insurance contract as a contract binding the insurer to pay them a certain amount of money when an insured case occurs and not as a relation characterized by an entire group of unclear rules and bases for the exclusion of the insurer's obligation" (Glintić, 2020, p. 59).

Life insurance is a special type of activity exerting strong influence on a country's social and economic structure. Its main field of interest is human life and it enables insured persons to create a system-based financial security of their own families and business. Also, it serves for the economy as a significant channel through which capital is put at the disposal of other economies (Vojinović & Dukić Mijatović, 2017, p. 390). Research into life insurace is a subject of legal sciences, but also entails a synthesis of knowledge of various other fields, such as mathematics. legislature, accounting, economy, finances, management, statistics, history, etc." (Uzelac, 2011, p. 97).

At the very beginning, the paper will focus on the term and characteristics of life insurance contracts and on the provisions of the Law on Contracts and Torts (1978) regarding life insurance contracts. Then it will concentrate on the definition of life insurance and on the legal aspects of life insurance contracts. o osiguranju života. Finally, detailed elaboration on the selected topic of the paper will ensue, reflected in the subtitle – the analysis of consumer (insurance beneficiary) protection in insurance contracts in general and in life insurance contracts in particular.

2. Term and Characteristics of Life Insurance Contracts

An insurance contract "represents an agreement between the insurer and a natural or legal person with a view to insurance against a risk the content of which has been defined by the law and an agreement between the contracting parties" (Pak, 2016, p. 33). According to Art. 897 of the Law on Contracts and Torts (1978), "By a contract of insurance a negotiator of insurance shall assume the obligation to pay a specific amount to an insurance organisation (insurer), while the organisation shall assume the obligation, should an event take place which represents the case covered by insurance, to pay the insured person, or a third party, the compensation or the stipulated amount or to do something else."

The characteristics of an insurance contract are given in the following table:

Table 1. Characteristics of an insurance contract

	Basic characteristics of an insurance contract	**Specific characteristic explained**
1	Insurance contract is an entitled contract.	An insurance contract is an entitled contract as, due to its specific elements, it has been regulated by the law and has been given a specific title.
2	Insurance contract is an adhesion contract.	In insurance contracts, one contracting party has the prerequisites (prepared in advance) under which the contract is to be concluded, whereas the other contracting party has the possibility to accept or reject those prerequisites.
3	Insurance contract is a bilaterally binding contract.	The insurance contractor shall pay the insurance price, i.e. premimum (contribution), whereas the insurer bears the risk covered by the insurance, which creates an obligation for them to pay certain amounts of money should the insured risk occur (damages, insured sum, compensation of costs).
4	Insurance contract is an aleatory contract.	In insurance contracts, the obligation of one of the contracting parties, i.e. the insurer, is a conditional one. The aforesaid obligation towards the insurance contractor depends on the realization of the insured risk in future, both when insurance of property and insurance of persons is concerned.

Source: Pak, A. (2016). *Zaključenje i prestanak ugovora o osiguranju:doktorska disertacija* [*Conclusion and termination of the insurance contract: doctoral dissertation*]. Novi Sad: Univerzitet Edukons, Fakultet za evropske pravno-političke studije, pp. 34-39.

Art. 942 to 965 of the Law on Contracts and Torts (1978) regulates the subject matter of a person's insurance contract. Here we will present the most important provisions in this field.

According to the provisions of Art. 942, "in contracts of insurance of persons (life insurance and accident insurance), the amount of insurance to be paid by the insurer on the occurrence of the insured event shall be determined in the insurance policy by agreement between the contracting parties." In addition to the elements constituting every insurance policy, "a life insurance policy shall include indications of the first name and last name of the person whose life is insured, their date of birth and the event or time limit being a prerequisite for requesting payment of the amount insured" (Art. 943).

According to Art. 946, "life insurance may relate to the life of the negotiator of insurance or it may relate to the life of a third party."

The Law stipulates and excludes risks. Thus, Art. 949 stipulates the exclusion of risk – insured person's suicide: "A contract of insurance covering a case of death shall not include the risk of suicide of the insured person if it happened in the first year of the insurance period. If the suicide happens within a three year period from the day of entering into contract, the insurer shall not be obliged to pay the beneficiary the insured amount, but only the mathematical reserve of the contract." Art. 950 stipulates the exclusion of risk – premeditated murder of the insured person: "an insurer shall be released from obligation to pay to the beneficiary the insured amount if they wilfully caused the death of the insured person, but if until then at least three annual insurance premiums have been paid, they shall be obliged to pay the mathematical reserve to the negotiator of insurance, and should they be the insured person, the payment shall be made to their successors." Art. 951 stipulates the exclusion of risk – deliberately causing an accident: "an insurer shall be released from obligation in the insurance contract covering an accident if the insured person wilfully caused the accident.". Art. 952 stipulates the exclusion of risk – war operations: "If the death of the insured person has been caused by war operations, the insurer – unless otherwise provided by the contract – shall not be bound to pay the beneficiary the insured amount, but shall be obliged to pay them the mathematical reserve from the contract. Unless otherwise provided by the contract, the insurer shall be released from the obligation from the accident insurance contract if the accident has been caused by war operations." Also, according to Art. 953, the Law on Contracts and Torts (1978) regulates the subject matter of the contractual exclusion of risk: "Other risks as well may be excluded by the contract covering cases of death or accident".

3. Term of Life Insurance and Legal Aspects of a Life Insurance Contract

According to Uzelac, "the insurance of a person differs from property insurance in its basic characteristics and there are also some special rules on which the legal relations in this group of insurance are based. The subject of insurance is life and health, i.e. the insured person's physical integrity. The risk covered by the insurance of a person is realized through the insured person's personality and cannot be expressed through material value" (Uzelac, 2011, p. 98).

It should be also emphasized that "life insurance serves as a supplement and expansion of social insurance, especially the pension and disability one" (Uzelac, 2011, p. 98).

A life insurance contract – policy – contains obligatory elements such as: "the contracting parties, full name of the insured person, date of birth, insurance term, coverage period, insurance sum, premium, date of issue, the parties' signatures and the specification of the terms under which the payment of the insured sum may be requested. In addition to the obligatory provisions, a contract or policy contains provisions that are not generally obligatory and result from the battle of insurance companies for the market" (Stevanović, 2012, p. 44).

When concluding a contract, "the insurance company and the insured person, i.e. contractor, are not in the same position as, in that transaction relation, the insurance company has more data and information than the insured person. On the other hand, the insured person sometimes may have more information than the insurance company and may also have an affinity for changing their behaviour after contracting insurance. Such a situation is resolved with the introduction of clauses protecting both the insurance company and the insured person, i.e. contractor" (Stevanović, 2012, p. 44).

Table 2 shows the clauses protecting both contracting parties in life insurance.

Table 2. Clauses protecting both contracting parties in life insurance

	Clause	**Clause explained**
1	Indisputability clause	This clause "points to the fact that one cannot pose the question of legal validity of a contract after a certain time span has expired – most often two years following conclusion. This period is important because it is upon insurance companies to establish the validity of a life insurance contract and, if no circumstances affecting contract validity occur during that period, the contract shall remain in effect even after the time span has expired. Thus, the insurer will have to pay the insured sum unless they themselves have taken certain measures for contract annulment and the due premiums have been duly paid and there have been no other infringements of the contract".

	Clause	**Clause explained**
2	Grace period clause	A life insurance contract is "bilaterally binding, which means that the insurer has to pay an insurance premium and only then shall the contract take effect, the insurer's liabilty starting running from the moment of premium payment. The premium is usually paid immediately upon contract conclusion and if it is not paid, the contract shall not take effect. The premiums are paid according to an agreement between the contracting parties and the premiums falling due are to be paid by the due date. However, in practice, one often delays paying the premium, so a grace period is allowed in that case, within which period the contract continues being valid".
3	Repurchase value clause	A life insurance (mixed insurance) contractor may "request of the insurer the payment of the repurchase policy value if at least three annual premiums have been paid. The life insurance contract – policy – must specify the conditions under which the payment of the repurchase value may be requested and also the method of calculation of that value in accordance with the insurance terms. The repurchase value is most often shown on the back of the policy, in the so-called repurchase value table".
4	Contract renewal clause	This clause entitles the policy holder "to renew a life insurance contract that has expired. The renewal entails the fulfillment of certain terms. The first one relates to data on the insured person, namely their health condition, financial situation and occupation. The second one entails that all the outstanding insurance premiums have been paid".
5	Misstatement of age clause	When concluding a life insurance contract, "the insurance contractor, i.e. the insured person shall provide, in the insurance offer, accurate date of their age, health condition and occupation. In this case, the entry age of the insurance contractor, i.e. the insured person is vital for the establishment of the insurance premium as age is a fact essential for risk assessment and entry into insurance. In the aforesaid case, the insured person may state that they are much younger than they really one and thereby increase the insurance company's business risk".

	Clause	Clause explained
6	Advance payment clause	An insurance contractor "may request of the insurance company the payment of part of the insured sum up to the amount of the repurchase value of the policy, which amount they shall return later. This is possible in life insurance policies concluded to last for the insured person's lifetime. The insurance contractor shall pay an intereset on the received advance payment and should they be late in the payment of that interest, they shall be deemed as if they had requested repurchase".
7	Clause on the transfer of insurance policy rights	An insurance contractor, who is also the policy holder, "may transfer the policy rights to another person and they may do so in two ways: by means of an absolute transfer – the transfer of all the rights to another person (the life insurance policy is given, most often to family members) or by pledging the policy – the policy serving as a security instrument for taking a loan – in this way, only one part of the rights is transferred and the transfer is temporary as, after the debt settlement, the transferred rights are returned to the insured person; this type of transfer is characteristic of "the life risk insurance only in the case of death of the loan beneficiary"."
8	Indexation clause	The EU law regulating the life insurance field "is also acquainted with the term of indexation in life insurance contracts. Indexation means the harmonization of insured sums with the retail price index growth, which index is published by Eurostat. Indexation is contracted at the moment of conclusion of a life insurance contract and is executed each time when the retail price index cumulatively grows by at least ten per cent from the previous indexation, on the police conclusion anniversary. Indexation entails the existence of an offer which is submitted to the insurance contractor. The indexation offer contains new insured sums, new premiums and the certificate submission deadline, which may not be shorter than 15 days from the day of the receipt of the offer. By signing the indexation offer, the insurance contractor confirms that they agree to the same".

Source: Stevanović, N. (2012). Ugovor o osiguranju života (polisa) i klauzule koje štite osiguranike [Life insurance contract (policy) and clauses that protect the insured]. *Tokovi osiguranja, 28* (4), pp. 45-49.

4. Protection of consumers (insurance beneficiaries) in life insurance contracts

Statistics show that "each year, in the EU internal market, another 150 million consumers enter the financial services sector" (Keglević, 2013, p. 209).

According to Glintić (2020), "the essence of the insurance service, all its rules and limitations, have a place of their own in the insurance policy, which is very seldom carefully read by the insurance contractor. It is mostly only at the moment when a loss occurs that the insurance contractor becomes aware of all the limitations of the insurer's liability. This leads to a discrepancy between the expectations of the insurance contractor and the actual scope of the insurer's liability, the insurer being prone to self-promotion and presenting oneself as one who guaranteees a safe future" (p. 59).

With a view to "protecting consumers from unfair contractual provisions in standard circumstances, the EU enacted Directive 93/13/EEC on Unfair Terms in Consumer Contracts (1993), the provisions of which have been, in Serbian law, applied in the provisions of the Consumer Protection Law (2021). Also, the European Commission passed the Guidelines for the Interpretation and Application of Directive 93/13 (2019), the basic objective of which is to present the European Court's interpretation of the key terms and provisions of the Directive in the light of the specific cases resolved by the national courts" (Ivančević, 2021, pp. 479-480).

Adhesion contracts, which also include insurance contracts, "ought to produce a certain legal effect that is not contrary to the applicable regulations and is aimed at not only fulfilling the contracting parties' interests, but also at not breaching the general interest." (Blagojević, 1934, p. 3).

As for insurance contracts, "there has to be a high level of mutual trust between the contracting parties" (Pavić, 2009, p. 60). A constituent part of an insurance contract is the general and special insurance terms composed by the insurer.

By applying insurance terms, "the insurer should not only protect their own interests, but also the interest of the insured person in order to realize the purpose of the concldued insurance contract. When composing the insurance terms, the insurer is required to act with the high care of a good professional, applying the professional rules, especially the actuarial ones, according to the principle of conscience and honesty, with good business customs and business ethics. The aforesaid implies that the terms must be comoised in a clear and intelligble manner and must not contain any unfair provisions for

the party accessing the contract, i.e. must not be detrimental to the insurance contractor" (Ivančević, 2021, p. 486).

It has been shown in practice that "insurance terms contain provisions that are detrimental to insurance beneficiaries and that there is a need for securing protection against the application of such provisions. Protection against unfair contractual terms is aimed at enabling consumers to have their individual interests protected from the contractual provisions applied in insurance terms as an integral part of a specific contract. What is important for consumer protection is the fact that the provisions of the insurance terms on the basis of which no specific contract has been conclided can as well be subject to the assessment of fariness. The European Court has taken the stand that the fact that a provision has not been applied in practice must not be an impediment to teh assessment of its fairness.[1] Banning the application of certain clauses in insurance terms, which clauses have been assessed as unfair, secures protection in future as well, whereby the collective interests of consumers are protected as well" (Ivančević, 2021, p. 487).

In Serbian law, the provisions of the Law on Contracts and Torts regulating the rules on the nullity of the provisions of general terms "accordingly apply to insurance contracts. More specifically, these rules specify that the provisions of general terms that are contrary to the goal of a concluded contract or to good business customs are null and void" (Ivančević, 2021, p. 487).

The provisions of the Consumer Protection Law (2021) introduces additional rules on the unfairness of contractual terms in consumer agreements, which rules apply to insurance contracts as well.

According to Art. 40 of the Consumer Protection Law (2021) "contract terms shall be binding on the consumer if they are expressed in plain, intelligible language, and are understandable to a reasonable person as educated and informed as the particular consumer. Contract terms shall be made available to the consumer in a manner that gives a real opportunity to become acquainted with them before the conclusion of the contract, with due regard to the means of communication used. The contract term shall be binding on the consumer if the consumer has agreed to it. A term pre-drafted by the trader in a manner indicating that the consumer has accepted it unless they explicitly opt out of that term, is not binding for the consumer."

According to Art. 41, "in the case of doubt about the meaning of a contract term, the interpretation most favourable to the consumer shall prevail."

[1] Judgement of 26 January 2017, Banco Primus, C-421/14, EU:C:2017:60. Judgement of 29 October 2015, BBVA, C-8/14, EU:C:2015:731.

According to Art. 42 of the same Law, "unfair contract terms are null and void. An unfair contract term means any term that, in contravention of the principle of good faith, results in a significant disproportion in contractual rights and responsibilities of the parties to the detriment of the consumer: The unfairness of a term shall be assessed taking into account: 1) the nature of the goods or services the contract relates to; 2) the circumstances under which the contract has been concluded; 3) other terms of the same contract or of another related contract; 4) the manner in which the contract was drafted and communicated to the consumer by the trader."

According to Art. 43 of the Consumer Protection Law (2021), "the contract terms that have the following objects or effects shall be unfair regardless of the circumstances of a particular case: 1) excluding or limiting the liability of the trader for death or personal injury caused to the consumer through an act or omission of that trader; 2) limiting the trader's obligation to respect commitments undertaken on its behalf by its agents or conditioning the obligation of the trader to perform or accept the obligation taken over on their behalf by their agent with a particular condition that is at the trader's discretion; 3) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy for the protection of their rights, particularly by requiring the consumer to take disputes exclusively to arbitration contrary to the legal provisions of this law; 4) restricting or limiting the evidence available to the consumer or imposing a burden of proof that, according to the applicable law, should lie with the trader; 5) determining the territorial jurisdiction of the court which is not in the place of residence/domicile of the consumer."

Finally, according to Art. 44 of the same Law, "a contract term that has the following object or effect shall be presumed to be unfair: 1) excluding or limiting the legal rights of the consumer vis-à-vis the trader or a third party in the event of the total or partial non-performance or inadequate performance by the trader of any of the contractual obligations, including the rights of the consumer to offset a debt owed to the trader against a claim that the consumer may have against him; 2) allowing the trader to retain a payment by the consumer when the latter fails to conclude or perform the contract, or refuses to conclude the contract, where the same right is not granted to the consumer; 3) requiring any consumer who fails to fulfil their contractual obligation to pay damages that significantly exceed the damage suffered by the trader; 4) allowing the trader to rescind the contract at will where the same right is not granted to the consumer; 5) enabling the trader to rescind an open-ended contract without reasonable notice except where the consumer

has failed to perform their contractual obligations; 6) tacit renewal of a fixed-term contract, if the consumer has not made a statement, if the period left for the consumer not to accept the extension of the contract is too short when compared with the period for which the contract has been concluded; 7) allowing the trader to increase the price agreed upn with the consumer when the contract was concluded without giving the consumer the right to rescind the contract; 8) obliging the consumer to fulfil all his/her obligations where the trader has failed to fulfill all its obligations; 9) giving the trader the possibility of transferring its obligations under the contract without the consumer's consent; 10) restricting the consumer's right to re-sell the goods by limiting the transferability of any guarantee provided by the trader; 11) enabling the trader to unilaterally alter the terms of the contract including the characteristics of the product or service; 12) unilaterally amending the contract terms communicated to the consumer in a durable medium through contract terms to which the consumer has not consented through the means of distance communication."

It is important to emphasize that "when assessing the fairness of a provision of general terms that has been recognized as unclear, special rules of interpretation to the advantage of the weaker contracting party, i.e. the consumer, shall apply" (Art. 100 of the Law on Contracts and Torts (1978)).

All the aforesaid rules contribute to the individual protection of consumers against unfair provisions in an insurance contract. Indirectly, these rules contribute to the collective protection of consumers due to the fact that the insurers, according to the decisions of courts, shall correct the insurance terms either of their own initiative or on the order of a competent authority.

5. Conclusion

The life insurance contracts concluded with insured individuals connect the insurance field with the consumer protection law. They are founded on the basic concept of the legal position of an insured person as the weaker contracting party due to their knowledge of the insurance service and the circumstances surrounding it or due to their negotiating position and the financial means put at their disposal. The insurer is a tradesperson and professional and is versed in the characteristic of the insurance service itself, such as risk assessment and the premium calculation method, the insured goods, risk occurrence prediction, assessment and analysis of statistics, etc. This is not the case when the insured individual is concerned – they need to be secured protection within the available legal framework.

Life insurance is a special type of activity exerting strong influence on a country's social and economic structure. Its main field of interest is human life and it enables insured persons to create a system-based financial security of their own families and business. In that sense, what is essential is the security and protection of the insurance beneficiary against all the risks and irregular actions which can be anticipated and prevented.

As stated by Petrović-Tomić (2019), "instruments of protection of the contractual insurance law make sense only if the consumer has provided coverage that is useful for them and in accordance with their needs. In our opinion, consumers need to be protected from the lack of expertise, which most often leads them to contracts that do not meet their needs, i.e.are useless or not in accordance with their needs" (p. 251). Furthermore, the needs, rights and interests of insurance beneficiaries are taken into account when the insurer or the intermediator acts in a professional manner.

In accordance with the importance of its subject, the paper touches upon the term and characteristics of life insurance contracts, in the definition of life insurance and on the legal aspects of life insurance contracts, all of which to be followed by a detailed elaboration on the selected topic of the paper, which is reflected in it subtitle – the analysis of consumer (insurance beneficiary) protection in insurance contracts in general and in life insurance contracts in particular.

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ZAŠTITA PRAVA POTROŠAČA KOD UGOVORA O OSIGURANJU ŽIVOTA

REZIME: Osiguranje života je posebna vrsta delatnosti koja ima veliki uticaj na socijalnu i ekonomsku strukturu jedne zemlje. Njegovo glavno područje interesovanja je ljudski život. Ugovori o osiguranju života se temelje na osnovnom shvatanju pravnog položaja osiguranog lica kao slabije ugovorne strane bilo zbog svog znanja o usluzi osiguranja i

okolnostima koje ga okružuju bilo zbog svoje pregovaračke pozicije i finansijskih sredstava koja mu stoje na raspolaganju. Osiguravač je trgovac i profesionalac, što se ne može reći i za osigurano lice, pa mu je potrebno osigurati zaštitu u mogućim zakonskim okvirima. U tom smislu, veoma je bitna sigurnost i zaštita korisnika osiguranja, od svih rizika i nekorektnih radnji koje je moguće predvideti i prevenirati. Shodno značaju teme rada, u radu je učinjen kraći osvrt na pojam i osobine ugovora o osiguranju, potom na pojmovno određenje osiguranja života, te pravne aspekte ugovora o osiguranju života, i konačno, poentiranje detaljne elaboracije odabrane teme rada ostvarilo se kroz podnaslov koji je analizirao zaštitu potrošača (korisnika usluga osiguranja) kod ugovora o osiguranju uopšte, te u ugovorima o osiguranju života.

***Ključne reči**: osiguranje života, ugovor o osiguranju, Zakon o zaštiti potrošača, Zakon o obligacionim odnosima, Republika Srbija.*

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PAY SYSTEM OF CIVIL OFFICERS IN SLOVENIA[1]

ABSTRACT: The right to salary is the basic right of civil servants. The peculiarity of the salary system in the Republic of Slovenia is reflected in the fact that the salary system in the public sector refers to the entire public sector, which consists of budget users (state bodies and self-governing local communities, public funds, public agencies, public institutes and other subjects of public law that are indirect beneficiaries of the state budget or local community budget). The wage system in the public sector is based on the Law on the wage system in the public sector and the regulations and collective agreements adopted on its basis. The law on the wage system in the public sector establishes fundamental and unique rules for the functioning of the wage system and a unique methodology for the calculation and payment of wages for all public sector activities. In addition to the basic salary, under the conditions established by the normative framework, civil servants have the right to bonuses and part of the salary based on work performance. Part of the salary for work performance was also known in the previous salary system, but the regulations differed slightly in certain industries. The new system standardized the schedule and introduced three types of work performance. One of the basic principles of the current salary system in the public sector is precisely the principle

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of salary incentives. In the paper, the author points out the positive effects of the introduction of the new payment system in the Republic of Slovenia, but also its shortcomings.

***Keywords**: civil servants, official salaries, Slovenia, salary system.*

1. Introduction

The definition of the public sector, especially in terms of separation from the private sector, is not entirely clear in theory and practice. In general, the public sector could be defined as a set of all public organizations that perform social and economic public activities, whereby it is an activity that operates according to non-market principles, which is mainly reflected in their budget financing or financing from public funds. The public sector exists to meet the needs of communities and individuals that cannot be met by market mechanisms (Setnikar-Cankar, Klun & Pevcin, 2005, p. 136). The basic element of every organization is employees or their workplaces, which also applies to the public sector. The theory designates those persons who work in public administration as civil servants (Kristan & Bojnec, 2014, p. 39). It is characteristic of the public sector that the state intervenes intensively in determining wages, mainly for reasons of responsibility for the implementation of appropriate macroeconomic policy (Hacek & Baclija, 2007, p. 49). It is considered that salaries in the public sector have important reasons for special regulation under public law. If the salary system in the public sector were completely left to free public law regulation, it would mean that each employer could independently regulate salaries. This would mean that there would be no horizontal equality between public sector employees performing the same job in different institutions. Hegel believed that "civil servants should be adequately paid for their work, in order to create a professional and competent administration, which will be able to effectively perform public affairs above political interests" (Hegel & Knox, 1957, p. 294). Bentham, on the other hand, in accordance with the utilitarian philosophy of the state and law, paid more attention to the costs of public administration, emphasized the importance of honorable work and considered ways to minimize the costs allocated to salaries in public administration (Bentham, 1962). Discussions about payment systems continue today through these views of two great philosophers. In Slovenia, a unique system of wages in the public sector has been implemented, which contains rules for determining the wages of employees in the public sector (Virant, 2009, p. 28). However, the salary

system in the public sector of Slovenia is very complex and refers to the entire public sector that consists of budget users, both those who are direct users and those who are indirect users of the state budget or local community budget.

2. A brief review of the official system of the Republic of Slovenia

The Republic of Slovenia has adopted a system of employee relations that contains elements of both the career and contract systems and has developed its own combined system of employee relations. This Slovenian solution is unique in the regional environment. In order for a person to be employed in the civil service, he must meet the requirement regarding the appropriate degree and education that is adequate for the career level. Probationary work is mandatory for a period of ten months at the beginning of the career, or for a period of six months if one starts working in a higher position. The law prescribes the recruitment procedure, the employer, that is, the state body, can decide at its discretion which of the three recruitment procedures to apply: an internal competition within a specific body, an internal competition in the entire administration or a public advertisement for a vacant position. An important feature of the Slovenian model is that employment is done on the basis of an employment contract. The decision on employment is at the discretion of the head of the state body, and it is possible to review it in court. Promotion in the civil service is based on the criteria of work successes and achievements.

The Slovenian Law on Public Servants recognizes a special category of public servants who work in state bodies and local self-government bodies. Within this category, the Law recognizes two groups: civil servants (*uradniki*) who perform administrative tasks, and professional-technical civil servants (strokovno-tehnični javni uslužbenici), who perform accompanying personnel and material-financial tasks. Pursuant to the provisions of Article 78, paragraph 1 of the Law on Public Servants, the positions of civil servants and professional-technical public servants in Slovenia are classified into the mentioned categories in accordance with the demands of the position, which refers to the demands of the job and the demands of working conditions and other circumstances that relate to working conditions.

All positions of civil servants have titles. When a civil servant is hired, that person is first appointed to the lowest position within the workplace (The Law on Public Servants, 2007). The Law on Public Servants established 16 positions within five categories of civil servants. Senior management jobs, that is, positions, represent a special group of official jobs. Pursuant to Article

80, paragraph 2 of the Law on Public Servants, civil servants in positions perform management, coordination and organization of work processes.

Senior administrative staff belong to the first instance. They are appointed to assist in the management and coordination of work in administrative bodies and administrative units, to manage organizational units in wider areas of work of administrative bodies, to manage administrative units and to perform the most demanding and specialized tasks. They are appointed by the Government of the Republic of Slovenia and must have appropriate education. They are proposed by the head of the administrative body, to whom they are responsible. Senior administrative workers in state bodies are the undersecretary, assistant chief, adviser to the chief and adviser to the Government of the Republic of Slovenia. The second level includes employees who perform professional tasks that ensure the performance of administrative functions in the field of work of administrative bodies. The administrative officer is appointed by the head of the administrative body. Second-level administrative staff are consultant, assistant, clerk, senior clerk, senior assistant, and senior advisor. The third level provides general, technical and other employment opportunities. This includes professional-technical employees hired by the head of the administrative body, to whom the employees are responsible. Employees belonging to the third level are senior professional associate, independent professional associate, financial officer, office clerk, administrative assistant, administrator and manipulator.

3. Payment system

In Slovenia, the Law on the Salary System in the Public Sector was adopted in 2008.[2] This law also regulates the salaries of civil servants and is a lex specialis. If an area is not regulated by official legislation and the Law on the Salary System in the Public Sector, the Law on Public Servants, the Law on State Administration and the Law on Labor Relations shall be applied suspensively. The Regulation on Salaries and Other Benefits of Civil Servants for Work Abroad applies to civil servants working abroad.

It is interesting that the Law on the Salary System in the Public Sector introduces a special method for determining the salary ratio between different

[2] The Law on the Salary System in the Public Sector was adopted in 2002, but until the actual use of the entire salary system in the public sector in practice (August 1, 2008), it underwent numerous changes and additions, which are the result of almost six years of coordination or negotiations with social partners on the entire normative framework of the salary system in the public sector.

groups of jobs in the public sector (The Law on the Salary System in the Public Sector, 2009), (e.g. state administration, health, education) based on the job classification method. It is about the so-called "reference" jobs (benchmark job), which "serve as a basis for determining the value of the job and the salary of the employee in the specified job in different sectors, in order to ensure the internal fairness of the salary system in the entire public sector" (Rabrenović, 2019, p. 95).

The common methodology is determined by a special collective agreement concluded between the government on the one hand and the representative trade union on the other. That methodology defined the rules for classifying jobs and titles into salary classes, taking into account the following criteria: the complexity of the work tasks or the conditions that must be met to acquire the title, required qualifications (required professional education, necessary additional knowledge and experience), responsibility and authority, psychophysical and psychological efforts and environmental influences (The Law on the Salary System in the Public Sector, 2009).

The salary system of civil servants in Slovenia is identical for all ministries. It determines the method of salary calculation, so Article 5 of this law specifies that the salary consists of a basic salary, an allowance for achievements and abilities, and a bonus. The employee's work performance is evaluated on a monthly basis, during three months or twice a year, and the result of the work performance affects the amount of the bonus for achievements and abilities. When it comes to advancement, the criteria that are evaluated are the annual performance rating and length of service. At least three years must pass between two promotions. The basic salary is determined by classifying the job or title into one of the pay grades from the pay scale attached to the Law on the Pay System in the Public Sector. The value of salary grades is adjusted once a year during the planning of the national budget, taking into account the number of civil servants and officials in accordance with the adopted work program, their basic salaries with planned advancement, the level of salaries and allowances. It is important that the level of coordination is the same for civil servants and civil servants. Article 8 the Law on the Salary System in the Public Sector presents salary grades and levels of required professional education, with the explanation that the basic salaries of civil servants are also determined based on the classification of jobs and titles into salary grades. Salary grades express the degree of complexity of jobs and titles according to the required professional training or qualification, and the lowest possible salary grade without promotion for a particular salary grade continues to be determined by the collective agreement for the public sector.

In the event that a civil servant performs tasks with a lower professional qualification than prescribed, he has the right to a basic salary that is two salary grades lower than the basic salary of the job he performs. If a civil servant who performs such tasks has more than 23 years of service, he is entitled to a basic salary that is one pay grade lower than the basic salary of the job he performs (The Law on the Salary System in the Public Sector, 2009).

When determining the amount of the basic salary, already achieved advancements in salary grades are taken into account. When calculating the salary for work in Slovenia, the basic salary, work allowance, seniority allowance, permanent allowance, specialization allowance, master's or doctoral degree and bilingualism allowance are taken into account. The salary for work in Slovenia is changed if the civil servant advances during the transfer abroad or one of the allowances considered (Article 5. Regulation on salaries and other benefits of civil servants for work abroad). When accepting a job, transferring to another job, i.e. being appointed to a title or a higher title, a civil servant is classified in the salary grade in which the job position in which the civil servant entered the employment relationship is located, i.e. on which the employment relationship was based , or in the salary class in which the title to which he was appointed is classified. If, as a result of being transferred to a post or title in a higher salary grade, the civil servant would be placed in a lower or the same salary grade that he reached by promotion in the post or title before that transfer, the salary grade in the new post or title in such a way as to be paid the grade that has already been achieved in the position or title before the transfer or appointment is increased by one salary grade (The Law on the Salary System in the Public Sector, 2009).

3.1. Advancement to a higher salary grade and earning a salary

It should be emphasized that advancement in salary grades is based on the time the employee has spent at a certain workplace and a positive performance evaluation, as well as the opportunities the employee has for advancement in the salary system. An official who has the possibility of promotion to a higher rank can advance by five pay grades within his title, while an official who does not have the possibility of promotion to a higher rank can advance by ten pay grades. Officials can advance by one or two salary grades every three years, if they meet the conditions (The Law on the Salary System in the Public Sector, 2009).

The condition for promotion to a higher salary class of civil servants is the work performance shown during the promotion period. Work performance

is evaluated according to: work results, independence, creativity and accuracy in performing tasks, reliability in performing tasks, quality of cooperation and organization of work and other abilities related to performing tasks (The Law on the Salary System in the Public Sector, 2009). The Law on the Salary System in the Public Sector expressly states that the detailed conditions for evaluating employees in the state administration, local self-government and judicial institutions will be regulated by a Government decree (The Law on the Salary System in the Public Sector, 2009). Therefore, a civil servant, on the basis of the Law on the Salary System in the Public Sector, can be promoted to a higher salary grade in the workplace or in the title. This promotion is decided by the competent authority or manager. A civil servant can advance by one or two pay grades every three years if he meets the prescribed conditions. The promotion period is considered to be the time since the last promotion to a higher salary grade. For the promotion period, the time when the civil servant worked in jobs for which the same level of professional education is prescribed is taken into account. At least once a year, the competent authority or manager checks the fulfillment of the conditions for advancement. A civil servant or official who is promoted to a higher salary grade, title or higher title acquires the right to earn in accordance with the higher salary grade, title or higher title obtained on December 1 of the year in which he was promoted.

The purpose of introducing promotion was to introduce a difference in the salaries of civil servants at the same workplace depending on work experience, competencies and achieved work results, which are of such a nature as to justify a permanent increase in the basic salary, not just an occasional variable reward.

4. Transparency of the wage system

Regarding the implementation of the principle of ensuring the transparency of the salary system, it can be concluded that the Law on the Public Sector Salary System and past practice show that the system is transparent and that the law has fully achieved its purpose in relation to this principle. Publicity of wages is guaranteed (The Law on the Salary System in the Public Sector, 2009), and various analyses related to wages in the public sector are published on the website of the ministry responsible for wages in the public sector.

The Slovenian Ministry of Public Administration pays special attention to providing support to budget users to successfully implement the system, as well as ensuring the transparency of the system for the general public. To this end, the sector of the Ministry of Wages has established a website on wages

in the public sector, which publishes information on current regulations and collective agreements, the latest explanations regarding wages, a catalog of jobs, etc. Special attention is paid to methodological support for users through the "Salary Portal" internet application (Portal plač javnega sektorja, 2023), which provides an overview and analysis of data on salaries of employees in the public sector. Finally, the Ministry of Public Administration established the National Open Data Portal of Slovenia, based on the EU directive on open data and reuse of information in the public sector (Directive 2013/37/EU amending Directive 2003/ 98/EC on the re-use of public sector information Text with EEA relevance), which publishes data on the situation in the public sector, including data on employee salaries, i.e. gross wages paid to employees for full-time or part-time work, as well as for overtime, on-call and salary compensation at the expense of the employer.[3]

An important source of ensuring the transparency of the salary system is the catalog of functions, jobs and titles, which is a list of functions, jobs and titles in the public sector. The catalog is published by the ministry responsible for the salary system in the public sector and includes functions, jobs and titles for all salary subgroups, from A1 to J3. The catalog is not a legal document, but a list that includes: function serial number, position and title, function or job code, function or position title, job grade, title code, title title, salary grade of the function, job or title without promotion, the highest salary grade of a function, position or title that can be achieved through promotion.

The catalog must contain all functions defined by the Social Insurance Institution, jobs and titles defined by collective agreements, jobs and titles defined by regulations and general acts of the employer. The catalog cannot be changed without first changing the mentioned acts, because it is only the resulting list of what has already been agreed at the normative level. Such an arrangement prevents any unilateral interference in the set of functions, positions and titles, as well as in pay grades. To include e.g. new workplace/ title in the list, therefore it is necessary to change the collective agreement (negotiations), regulation or general act (coordination with social partners), taking into account the provisions of Article 13 of the Labor and Social Welfare Act, which determines the way of classifying jobs/titles into salary classes.

The catalog is published on the website of the Ministry in charge of salary affairs in the public sector and allows interested parties to quickly view the scope of all existing jobs with the associated pay grades, which show data

[3] Read more at Ministrstvo za javno upravo, 2023.

on the lowest and highest possible basic salary that an employee can receive for performing work at a certain workplace.[4]

Although the new salary system, by establishing uniform rules related to the regulation of salaries for the entire public sector, introduced order and greater transparency into the salary system, including in terms of the calculation and payment of salaries and the provision of salaries to the public of civil servants and officials, on the other hand, a certain rigidity of this system is evident, which makes it difficult for budget users to adapt to the changing influences (requirements) of the environment. As also emerges from the OECD study on the salary system in the public sector of Slovenia, the salary system allows management too little autonomy to plan e.g. jobs, personnel policy, employee reward policy or determination of their salaries depending on work results, etc. The problem of system rigidity or lack of flexibility manifests both at the level of system operation and at the level of determining the individual salary of an employee. Considering the built-in automations and the relatively small room for maneuver to influence the determination of employees' wages, the question of the scope and mechanisms of sanctioning responsibility also arises. Expectations regarding responsibility may be higher if the area of decision-making autonomy is also greater, and conversely, management cannot be expected to be responsible for the entire scope of business if there is not a possibility of decision-making autonomy or influence on business.

5. Conclusion

The Law on the Salary System in the Public Sector of Slovenia stipulates that salary consists of three parts: basic salary, performance bonus and salary supplements. The basic salary is determined by the salary class in which the workplace or title is located and the number of promotions, i.e. the basic salaries of civil servants are the result of the classification of jobs into salary classes and the promotions achieved by civil servants in the workplace or in

[4] If, for example, in state administration bodies, due to a change in legal regulations, a new position must be included in the set of positions, then this position is first defined by the regulation on internal organization, systematization, positions and titles in state administration bodies and judicial bodies (with a job description and conditions for the performance of work), while to determine the salary grade of this position, it is necessary to amend the corresponding collective agreement, since jobs in state administration bodies are classified into salary grades by the collective, by agreement and not by Government regulation (the exception is soldiers – salary subgroup C4, which are classified according to the regulation and jobs in the field of security and intelligence services, which are classified into pay grades by an act of the authority).

the title. The basic salary represents a fixed part of the salary that the official receives in a particular position or title and depends on the criteria of the complexity of the job and the classification of the civil servant in a certain salary class. Allowances are a reflection of working conditions, where some allowances are related to the personal circumstances of a particular employee, and most allowances are paid depending on the conditions in which a certain job is performed (e.g. allowance for working at night, allowance for less favorable working conditions, allowance for hazards and special loads, overtime allowance, etc.).

One of the key issues that should be resolved in relation to the salary system in the public sector is the establishment of a clear boundary between the necessity of uniform and centrally set rules for the functioning of the salary system and the necessity of providing the necessary autonomy to the management, in order to optimize personnel and financial resources within the available resources and in general, the business of budget users. In any case, a prerequisite for the establishment of greater autonomy of persons otherwise responsible for the operations of budget users is the deregulation of the salary system, which will increase the role and responsibility of management due to a smaller scope of normative regulation.

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PLATNI SISTEM DRŽAVNIH SLUŽBENIKA U SLOVENIJI

REZIME: Osobenost platnog sistema u Republici Sloveniji ogleda se u tome da se sistem plata u javnom sektoru odnosi na ceo javni sektor koji čine korisnici budžeta (državni organi i samoupravne lokalne zajednice, javni fondovi, javne agencije, javni zavodi i drugi subjekti javnog prava koji su indirektni korisnici državnog budžeta ili budžeta lokalne zajednice). Sistem plata u javnom sektoru zasniva se

na Zakonu o sistemu plata u javnom sektoru i propisima i kolektivnim ugovorima donetim na osnovu njega. Zakonom o sistemu plata u javnom sektoru se utvrđuju temeljna i jedinstvena pravila za funkcionisanje sistema plata i jedinstvena metodologija za obračun i isplatu plata za sve delatnosti javnog sektora. Pored osnovne zarade, pod uslovima utvrđenim normativnim okvirom, državni službenici imaju pravo na bonuse i deo zarade po osnovu radnog učinka. Deo zarade za radni učinak bio je poznat i u prethodnom sistemu plata, ali se regulativa u pojedinim delatnostima neznatno razlikovala. Novi sistem je ujednačio raspored i uveo tri vrste radnog učinka. Jedan od osnovnih principa važećeg sistema plata u javnom sektoru je upravo princip podsticaja zarada. U radu autor ukazuje na pozitivne efekte uvođenja novog platnog sistema u Republici Sloveniji, ali i na nedostatke istog.

Ključne reči: *državni službenici, službeničke plate, Slovenija, platni sistem.*

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SUSPENDED SENTENCE WITH CUSTODIAL SUPERVISION IN SERBIA – WHAT DOES CUSTODIAL SUPERVISION INVOLVE?

ABSTRACT: Suspended sentence with custodial supervision represents an alternative sanction that the legislation of the Republic of Serbia has known for half a century, but its application is rare because it is ordered in a negligible number of cases. Ordering custodial supervision has its advantages and it can be effective in cases when it is not enough to just sentence a person conditionally nor would it be justified and effective to punish the individual more severely, but it is necessary to ensure some sort of help and support in order to correct the offender's behavior and deter them from committing criminal acts in the future. In order to better understand this sanction and see how it works in practice, we have analyzed measures of custodial supervision which are most often prescribed in accordance with the committed crimes. The paper uses a statistical and comparative method and analyzes the available literature, as well as the judgments of those courts that in a certain observed period had the largest number of suspended sentences with custodial supervision.

Keywords: *custodial supervision, suspended sentence, alternative sanction.*

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1. Introduction

Probation is a sanction recognized by legislatures around the world, and our legislation accepts a mixed system of probation. It was created by taking on the characteristics of the continental system of conditional sentence with elements of probation, trying to overcome the shortcomings of the existing systems that have been seen, Anglo-Saxon and continental (Jovašević, 2018). However, it should be noted that although the determination of custodial supervision with a conditional sentence includes elements of probation, probation is a broader concept than this form of sentence, because it does not only include the supervision of the conditional sentence, but also a number of other tasks that can be assigned to the defendant in different stages of criminal proceedings (Korać & Vuković, 2016, p. 65). The second half of the nineteenth century and the beginning of the twentieth century is the period in which suspended sentence appeared (Jovašević, 2017, p. 43), while the its prescribing and peculiarities in a certain legal system depends on which system given country has adopted and the characteristics of that system. It first appeared in England and America in the first half of the nineteenth century, while the continental system of suspended sentence was created in 1888 in Belgium, and then in 1891 in France (Radovanović, 1972, p. 277; Ilić & Maljković, 2015, p. 125). There are certain differences between these two systems which are reflected in the fact that in the Anglo-Saxon system, the criminal proceedings are not ended but postponed and the punishment is not pronounced, the custodial supervision is determined and it is carried out by professionals, while in the second type of suspended sentence, the court sentences the perpetrator of the criminal act and at the same time, under certain conditions he postpones its execution for a certain time. If the suspended sentence is revoked, in the first case the procedure will be carried out and the sentence will be imposed, while in the second case the determined sentence will be carried out (Jovašević, 2018, p. 33). These two systems have their advantages, but there are also certain disadvantages, which is why the mixed system of suspended sentence was created. In this system the court pronounces a suspended sentence on the perpetrator of the criminal act and at the same time determines his punishment but postpones its execution for a certain period of time under certain conditions, determining at the same time the exercise of custodial supervision over the perpetrator of the criminal offense, in order to provide him the necessary help and support and in order to deterred him from committing criminal acts in the future. Serbian legislation has accepted the mixed model of suspended sentence and since 1976 it has

been prescribing the possibility of determining a suspended sentence with custodial supervision, although there were proposals for its introduction earlier (Stojanović, 2006, p. 299).

2. Measures of custodial supervision with suspended sentence in the current legislation of Serbia

According to the current law, if the conditions are met, the court can impose a suspended sentence[1] and order custodial supervision when it considers that the purpose of the suspended sentence can be achieved more successfully, taking into account the personality of the perpetrator of the criminal act, his earlier life, behavior after the crime, his relationship to the victim and as circumstances of the commission of the criminal offense (Criminal Code, 2019, Art. 72). Custodial supervision includes a number of measures aimed at providing help, care, protection and supervision to the perpetrator, which the court determines when imposing a suspended sentence and they form the content of custodial supervision. When deciding, the court chooses those measures that it considers adequate in the specific case and effective in achieving the purpose of custodial supervision. When deciding on the content of custodial supervision, the court will take into account the circumstances related to the perpetrator's personality, such as his age, state of health, inclinations and habits, motives from which he committed the crime, demeanor after the crime, previous life, personal and family opportunities and the existence of conditions for fulfilling the instructions that are determined to him (Criminal Code, 2019, Art. 74). The duration of these measures is determined by the court and it must be within the probationary period. In case of failure to fulfill the instructions determined by the suspended sentence, the court has the possibility to caution the person, to replace the instructions,

[1] The law prescribes that the court, when imposing a suspended sentence, determines the punishment for the perpetrator of the criminal act and at the same time determines that it will not be carried out if this person does not commit a new criminal act within a certain period of time. This time is called the probationary period and is determined by the court and can last from one to five years. The court can impose a suspended sentence on the perpetrator who has been sentenced to imprisonment for less than two years, taking into account the purpose of the suspended sentence, the personality of the perpetrator, his previous life, behavior after the crime, degree of guilt and other circumstances under which the crime was committed, while prescribes that this warning measure cannot be imposed for criminal offenses for which it is possible to impose a prison sentence of eight years or a heavier sentence, as well as in cases where a person has already been sentenced to prison or a suspended sentence for an intentional criminal offense and has not passed more than five years from the finality of the conviction (Criminal Code, Art. 65-66).

to extend the duration of the custodial supervision within the probationary period or to revoke the suspended sentence.

The imposition of this type of suspended sentence is a possibility prescribed by law and it's not an instruction for the court. It decides to impose custodial supervision when it can be expected that in this way the purpose of the suspended sentence will be more fully realized. There is no difference between the purpose of this and the basic form of suspended sentence, because they are imposed for the same purpose, in order to influence the behavior of the convicted so that he does not commit criminal acts again in the future. What distinguishes the two forms of this admonitional sanction is the way in which it can be achieved. In the case of the basic form, only the threat of punishment is sufficient in case of non-fulfillment of conditions determined by the court decision, while in the case of suspended sentence with custodial supervision, this is not the case, because it is necessary to determine and apply certain supervision measures aimed at providing the necessary help and support to the perpetrator, because there is a risk that without applying these measures, this person will commit a criminal offense again in the future (Delibašić & Kostić, 2020, p. 319). The application of measures of custodial supervision works adequately in cases where it is not certain that a person a person without this help, support and supervision will not repeat this behavior, which is why it is not justified to impose a classic suspended sentence, and it is not justified, nor is it effective to impose a more severe sanction, such as a prison sentence. Therefore, the imposition of this form of suspended sentence appears as an appropriate solution for all those borderline cases in which it is not possible to sentence the perpetrator only conditionally (Stojanović, 2012, p. 12), but he needs some help in order to refrain from future illegal activity.

The Criminal Code prescribes the content of custodial supervision, and the court's freedom in choosing the instructions in a specific case is not absolute, because it is limited by the content prescribed by law. Therefore, in a specific case, the court chooses those measures it considers effective, but it does not have the possibility to determine those instructions that the law does not prescribe. Also, the probationer who is in charge of executing the sanction in question is limited by the court decision and he carries out the execution of only those measures that the court determined when imposing a suspended sentence, not other measures of custodial supervision (Tešović, 2020, p. 63). However, neither the law regulating the procedure for the execution of this sanction (Law on the execution of sanctions and measures that are carried out in the community, 2018, Art. 34-37), nor other sanctions and measures

that are carried out in the community, did not specify the content of these instructions,[2] nor other laws.

The legislator provided that the court can determine in a specific case one or more instructions, prescribing that the following instructions constitute the content of custodial supervision: reporting to the authority responsible for the execution of custodial supervision within certain period of time set by certain authority; training of a person who is assigned custodial supervision for a particular profession; the instruction of this person to accept employment that corresponds to his abilities; fulfillment of family instructions, which consist in supporting the family, looking after and raising children, etc.; the instruction to refrain from visiting certain places, establishment or events that could be an opportunity or an incentive for the perpetrator to re-commit criminal offenses; the instruction to provide timely notification of a change of place of residence, address or workplace; abstinence from the use of drugs or alcohol; treatment in an competent medical institution; visiting certain professional and other counseling centers or institutions and acting according to their instructions; elimination or mitigation of damage caused by a criminal offense, especially reconciliation with the victim of the committed criminal offense (Criminal Code, 2019, Article 73).

The legislator prescribed a greater number of instructions that make up custodial supervision, however, this is not enough for their implementation. Some instructions are difficult to implement, due to their vagueness and the absence of conditions for their execution, their existence of circumstances that make it difficult to fulfill them and for certain instructions is the question of the possibility of supervision (Dragojlović & Pašić, 2017, p. 381). Conditions of high unemployment make difficult to fulfill the instruction to accept employment and the person's living conditions can make difficult or impossible to implement other instructions, because their fulfillment in the first moment might have a negative impact on the existence of the person to whom the fulfillment of the instructions is determined or for his family (Spasojević, 2021, p. 18), which is the opposite of the intended aim. This problem is noticeable when it comes to the measure of fulfilling the instruction

[2] The Law on the execution of sanctions and measures that are carried out in community regulates the procedure for the execution of this sanctions and measures, which were pronounced by the court in criminal, misdemeanor or other court proceedings, and it prescribes the purpose, content, method of execution, and the position of persons in the proceedings, and supervision, for the purpose of protecting society from criminality, with the aim of achieving resocialization and reintegration of convicted persons through their execution. This law prescribes that the tasks of execution of the mentioned sanctions and measures are under the jurisdiction of the trustee service.

to train for a particular profession, which as a measure is well thought out, but the question is whether its application is appropriate in certain cases when a person is in difficult living conditions, in which he must provide means for his life and the life of his family. When implementing this measure, it remains questionable who would pay the costs of fulfilling the instruction, as well as whether the person would be able to find suitable employment after fulfilling this measure. Measures such as treatment in an appropriate health institution and visiting certain professional and other counseling centers or institutions and acting according to their instructions are good measures, but the question is whether there are a sufficient number of these institutions in Serbia and whether they are accessible to all citizens. The instruction to refrain from visiting certain places, establishment or events that could be an opportunity or an incentive for the perpetrator to commit criminal acts again, the issue of supervision over the execution of this instruction arises. It should also be kept in mind the importance of the trustee's work in achieving the purpose of custodial supervision, because probation officers are professionals with certain competencies, knowledge and skills who helps and supervises the perpetrator in fulfillment of the instructions. In addition to the above, we should take into account the fact of the number of trustees employed in Serbia, who have a number of responsibilities and tasks, because in addition to tasks related to the execution of suspended sentences with custodial supervision, they are also responsible for the execution of other alternative sanctions and measures. The fact is that the court determines the measure of supervision in a specific case taking into account the aforementioned circumstances and that if there are no conditions for the application of a certain measure, it will not even determine it. However, in order to impose the sanction in question, it is necessary to fulfill the conditions for its application and for all the measures which are prescribed by law, leaving the court the possibility to choose the one it considers adequate in the specific case. One of the reasons for the rare application of this sanction is the vagueness of certain measures and the impossibility or difficult possibility of their implementation in practice. This deficiency should be eliminated and it should create necessary conditions for its better application in practice.

Although this form of suspended sentence has been prescribed for many years, in practice its application is unnoticed. This is because there were no adequate conditions for its application for a long time, wherefore its pronouncement was also absent and the lack of a normative nature also could be considered the reason why the application of this sanction in practice has not taken off. In the meantime, some of the deficiencies have been eliminated.

Establishment of a trustee service, as a special state authority that is competent for execution of this sanction, is an important prerequisite for its application. However, this alternative sanction is still imposed in a small number of cases. Recognizing its advantages, we must strive to remove the obstacles due to which it has been forgotten and strive for its more frequent application so that it can justify its existence and demonstrate its effectiveness in practice.

3. Measures of custodial supervision in the practice of Basic Courts in the Republic of Serbia

In order to find out what measures are most often imposed on adult offenders, whether they are imposed independently or with other measures of custodial supervision, as well as what are the reasons why the court decided to impose this form of suspended sentence, the author of the paper analyzed the judgments of the courts that in a certain period had the largest number of suspended sentences with custodial supervision in the Republic of Serbia. The observed period is 2019-2021. By looking at the frequency of the imposition of the sanction in question, it can be seen that it is imposed in a negligible number. In the period from 2019 to the end of 2021 it was pronounced only 43 times, 14 times in 2019, 19 times in 2020 and only 10 times in 2021. It is interesting that the classic suspended sentence is the most frequently pronounced sanction and counts thousands of judgments (Republički zavod za statistiku, 2021).[3] In the observed period, in relation to all courts in Serbia, the Basic Court in Pančevo ordered custodial supervision with a suspended sentence the most times (10 times), followed by the Basic Court in Novi Sad (8 times), the Basic Court in Požega (6 times), The Basic Court in Subotica and the Basic Court in Vranje each had three such verdicts, the First Basic Court in Belgrade, the Basic Court in Kragujevac and the Basic Court in Niš each handed down two suspended sentences with custodial supervision and the Basic Court in Sombor, Niš, Šid , Aleksinac, Vrbas and Leskovac each had one verdict, which imposed a suspended sentence with custodial supervision. As the majority of suspended sentences with custodial supervision in the period from 2019 to the end of 2021 were pronounced by the Basic Court in Pančevo, the Basic Court in Novi Sad and the Basic Court in Požega, the paper analyzes the verdicts of these courts (a total of 22 verdicts out of 24).

The supervision measure that is imposed is the instruction to abstain from the use of drugs or alcohol, because it was determined in fifteen judgments,

[3] In 2019, there were even 16,079 suspended sentences, 14,160 in 2020, and 14,488 in 2021.

that is, it was determined in 35% of cases, of which abstinence from the use of alcohol was determined eight times and abstinence from the use of drugs five times, while abstinence from both substances was determined twice. This measure is generally determined with another instruction and it was most often with the instruction to visit certain professional and other counseling centers or institutions and act according to their instructions or with reporting to the authority responsible for the enforcement of this sanction. According to the frequency of determination, these two measures follow the instruction to abstain from the use of drugs or alcohol, because the instruction to report to the competent authority was determined ten times, of which this measure was determined independently only once and the remaining nine times it was determined with another instruction. It is an interesting fact that although the exercise of custodial supervision requires the existence of a certain relationship of trust, cooperation and communication between the probation officer and the person who has been sentenced to a suspended sentence with custodial supervision, the instruction to report to the authority responsible for the execution of custodial supervision within certain period is not foreseen as a mandatory measure of custodial supervision, but the court may or may not determine it in each specific case. Therefore, this measure was not determined every time the relevant sanction was imposed, but it was done in 23% of cases. The instruction to visit certain professional and other counseling centers or institutions and to act according to their instructions constitutes 21% of certain measures with a suspended sentence, because it was determined nine times with the instruction to fulfill other measures, the most common of which was abstinence from alcohol use. Other instructions were determined by the court only a few times: treatment in an appropriate medical institution four times, refraining from visiting certain places, establishment or events if this could be an opportunity or incentive for committing criminal acts again was determined twice and other instructions were determined once or none at all (fulfillment of family support instructions, child care and education and other family instructions and timely notification of change of residence, address or workplace are not specified in any of them).

By looking at the judgments that were the subject of the analysis, it can be seen that the majority of suspended sentences with custodial supervision were imposed for the crime of domestic violence (Criminal Code, 2019, Art. 194 paragraphs 1 and 2) and unauthorized possession of narcotic drugs (Criminal Code Code, 2019, Article 246a). Out of the analyzed twenty two judgments that imposed this sanction, nine times it was due to the committed criminal act of domestic violence of which the Basic Court in Pančevo

pronounced six, the Basic Court in Požega two, and the Basic Court in Novi Sad one. In connection with the mentioned criminal act, the aforementioned judgments set the instruction to abstain from the use of drugs or alcohol in all cases: in seven judgments the instruction to refrain from the use of alcoholic beverages was determined and in two judgments was orderd the instruction to refrain from the use of narcotic drugs or alcohol. The instruction that consists in visiting certain professional and other counseling centers or institutions and acting according to their instructions is the next measure in terms of the frequency of determining the perpetrators of the criminal act of domestic violence. It was ordered to abstain from the use of drugs or alcohol seven times, of which in one case it was ordered to report and refrain from visiting certain places, establishment or events that could be an opportunity or incentive for the perpetrator to commit criminal acts again. The instruction to abstain from drug use is determined in the majority of cases for perpetrators who have been convicted of the crime of unauthorized possession of narcotic drugs (Criminal Code, 2019, Article 246a). Out of a total of seven judgments by which a person was convicted for this criminal offense,[4] in six cases a measure of supervision of abstinence from drug use was determined, and in four cases, along with this instruction, the instruction to report to the authority responsible for enforcement this measure was determined, while in one case it was also determined the instruction to report to the authority responsible for the execution of custodial supervision and the instruction to receive treatment in the appropriate medical institution. In the remaining cases, the persons who were ordered to be supervised with a suspended sentence were convicted for committing the following criminal acts: endangerment of safety (Criminal Code, Art. 138), violetion of family duty (Criminal Code, Art. 196), robbery (Criminal Code, Art. 206), fascilitating the taking of narcotics (Criminal Code, Article 247), causing general danger (Criminal Code, Article 278), attack on an official in perfomance of duty (Criminal Code, Article 323) and the remaining measures of custodial supervision were determined by them.

When it comes to the reasons why the courts decided to impose this sanction, it should be noted that, in accordance with the legal possibilities a large number of judgments do not contain an explanation and because of that it is not possible to determine them in every case. One of the reasons why the court determined this form of suspended sentence in this particular case is the

[4] In the period from 2019 to the end of 2021, the Basic Court in Požega imposed four suspended sentences with protective supervision for the committed criminal offense under Article 246a of the Criminal Code, the Basic Court in Pančevo two, and the Basic Court in Novi Sad one.

court's opinion that this is a specific and complex case and that it would not be necessary, justified, or even expedient to impose a prison sentence, because it would represent retaliation against the defendant and to his family, because that would put them in an even more difficult and unfavorable position than the one they are in, considering at the same time that the imposition of a suspended sentence in a specific case is proportional to the gravity of the committed criminal offense, the degree of guilt of the defendant and that its imposition in a given case necessary and sufficient to achieve the purpose of this criminal sanction, considering that the mere threat of punishment will not influence enough on the defendant to refrain from commiting criminal acts in the future, and the supervision measure consisting of refraining from visiting gambling houses, casinos, betting shops and other places where he determined the possibility of gambling and the instruction to visit the department for addiction diseases, because he indisputably established that the defendant has problems with gambling and often goes to places where gambling is allowed, which he did on the day he committed the crime for which he was convicted.[5] Accepting the prosecutor's proposal to hold a hearing for the imposition of a criminal sanction, the Basic Court in Pancevo sentenced the defendant to a suspended sentence with custodial supervision for the crime of domestic violence, because it was established that the defendant committed the crime in question in a state of ordinary drunkenness, and that in the person in question has an emotionally unstable personality disorder with a problem of controlling impulses from the emotionally volitional drive sphere, negative affects and emotions. The court ordered the defendant to undergo custodial supervision measures to refrain from consuming alcohol and narcotics and visit certain professional counseling centers or institutions and act according to their instructions for a period of two years from the finality of the verdict. The court considered as mitigating circumstances for the defendant the fact that he is the father of two minor children and that he is unemployed, while it did not find any aggravating circumstances and considered that the imposed criminal sanction will sufficiently influence the defendant to refrain from doing the same or similar criminal offense in the future and that it achieves fairness and proportionality between the severity of the committed criminal offense and the imposed sanction.[6] The Basic Court in Novi Sad handed down a suspended sentence to the defendant for the criminal offense of assaulting an official in the performance of official duties, determining the measure of

[5] Judgment of the Basic Court in Novi Sad, K. 1400/20 from 02.12.2020.
[6] Judgment of the Basic Court in Pančevo, 1K. 583/21 from 30.07.2021.

custodial supervision of treatment in an appropriate medical facility, accepting the expert's opinion that it is necessary to order psychiatric treatment for the defendant in outpatient conditions at liberty, because he has certain illnesses and lower tolerance and poorer functioning control, due to which there is a possibility that he will commit this or a similar act again in the future if he does not undergo treatment and even if he does, but then the risk is significantly lower. Determining that the defendant acted in the specific case with direct intent, the court imposed a suspended sentence with custodial supervision, considering that it is appropriate for the degree of guilt of the defendant and the severity of the consequences of the criminal act, as well as the personality of the defendant, and that it will produce the consequences provided for by law, which will achieve the purpose of punishment in relation to the defendant, but also in relation to achieving the goals of general prevention.[7]

4. Conclusion

Domestic criminal legislation prescribes the possibility of imposing conditional sentence with custodial supervision. However, although it is not intended for broader use, the courts in Serbia rarely and insufficiently use this possibility and in a negligible number of cases they impose the mentioned form of this sanction. Of all the courts in the Republic of Serbia, the Basic Court in Pančevo, the Basic Court in Novi Sad and the Basic Court in Požega imposed the sanction in question the most. In 86% of cases, the content of custodial supervision consisted of several measures and the measure of abstinence from the use of drugs or alcohol is the most frequently determined instruction of the custodial supervision. Although it would be logical for the instruction to report to the authority responsible for the enforcement of the sanction in question to be mandatory, it was determined in half of the cases, making it the second measure of custodial supervision in terms of frequency of determination. The instruction to visit certain professional and other counseling centers or institutions and to act according to their instructions was also determined several times, while other measures were determined sporadically or not at all. One of the reasons why this is the case is that the realization of certain measures is difficult or impossible and therefore we need to work on solving this problem. The mentioned three measures of custodial supervision are most often imposed on perpetrators who have been convicted of domestic violence or unauthorized possession of narcotic drugs. This points

[7] Judgment of the Basic Court in Novi Sad, K. 304/2018 dated 13.06.2019.

to a problem that needs to be solved in the field of prevention, by pointing out the need to preserve family values, creating and nurturing healthy habits and values, and by pointing out the harmful consequences of alcohol and narcotic drug consumption, but also by taking measures to suppress violence, domestically and in general.

The application of this alternative sanction favors those cases that need some help in order to correct their behavior in order to deter them from committing criminal acts again in the future, which is why it is not enough to only conditionally sentence such persons and on the other hand, their deprivation of liberty would not be justified in order to punishment, and therefore it is not even intended for wide use (Stojanović, 2012), but its application should certainly be greater compared to the past. It would be good if the professional, as well as the civil public, realized the advantages of its application and that it applied more, because it has the potential to eliminate the causes and conditions that led to the commission of a criminal offense and it can be effective in cases when punishment is neither justified nor effective and a suspended sentence without additional measures is not sufficient to achieve its purpose.

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USLOVNA OSUDA SA ZAŠTITNIM NADZOROM U SRBIJI – SADRŽINA ZAŠTITNOG NADZORA

REZIME: Uslovna osuda sa zaštitnim nadzorom predstavlja alternativnu sankciju koju zakonodavstvo Republike Srbije poznaje već pola veka, ali je njena primena u praksi retka, jer se izriče u zanemarljivo malom broju slučajeva. Određivanje zaštitnog nadzora ima svoje prednosti i ono može da se pokaže efikasnim onda kada nije dovoljno lice samo uslovno osuditi, niti je opravdano i delotvorno strožije ga kazniti, već je potrebno pružiti mu određenu pomoć i podršku kako bi ono korigovalo svoje ponašanje i kako bi se odvratilo od vršenja krivičnih dela u budućnosti. Radi boljeg

razumevanja predmetne sankcije, uvida kakvo je stanje u praksi, koje su mere zaštitnog nadzora bile najčešće određene i za koja krivična dela, u radu je primenjen stastistički i komparativni metod i analizirana je dostupna litaratura, kao i presude onih sudova koji su u određenom periodu imali najveći broj uslovnih osuda uz koje je određen zaštitni nadzor.

Ključne reči: *zaštitni nadzor, uslovna osuda, alternativna sankcija.*

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CERTAIN ASPECTS OF THE POSITION AND RIGHTS OF CHILDREN AS VICTIMS OF CRIMINAL OFFENSES[1]

ABSTRACT: Children, as well as minors in general, represent one of the most sensitive social groups, and consequently, criminal acts hit children particularly hard. For this reason, the domestic legislator, like the majority of other legislators, incriminates when the crime is committed against a child as a serious or heaviest form of a specific criminal offense, that is, as a special qualifying circumstance. However, in addition to the fact that, within the framework of criminal material legislation, it prescribes qualified forms of criminal acts when children are the victims, legislator, within the framework of juvenile criminal legislation and other special regulations, also prescribes other measures aimed at improving and protecting the position of the child in criminal proceedings. This is because the protection of children as victims of crime is not only a legal issue, but also a social and moral imperative, which must be taken seriously to ensure that all children receive the protection and support they need to grow and develop. In terms of what has been stated, this paper points to the regulation of the position of the child as a victim of a criminal offense, primarily at a national level, starting from general protection standards, to individual solutions in some of the specific forms of criminality where children often appear as victims – family and sexual violence.

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Keywords: *child protection, criminal protection, Domestic violence, sexual violence.*

1. Introductory remarks

Abuse of children, in general, in recent years in the Republic of Serbia is an increasingly topical issue that is also the subject of numerous public debates. Just by reviewing the articles in the electronic and written media, on a weekly basis, we become familiar with new criminal acts committed against the youngest members of our society, which, as a rule, are followed by public uproar, and the request for the application of "brutal measures of retaliation against abusers" (Kron, 2010; Petković, Pavlović, & Dimitrijević, 2012). On the other hand, the crimes against children themselves are very serious considering the fact that they can have a decisive effect on the development and personality of the child, and it is certain that long after the critical event, many children will feel mistrust towards the outside world, and children often lack the ability to effectively deal with the event on their own (Lindgren & Nikolić Ristanović, 2011, p. 64).

Therefore, legal, and especially criminal-legal, protection of minors and children as the youngest and most sensitive part of society, from special is important for every modern organized society. In general, the issue of protecting minors from all forms of physical and psychological attacks has been increasingly prevalent in recent years, both at the national level and at the level of international regulation. Thus, normative intervention, both at the international and at the national level, occurs as a necessary and irreplaceable part of the legal protection of children from actions that most severely violate basic social values, those that most deeply harm the child's interests, and which are identified with the public interest (Janjić Komar & Obretković, 1996, p. 103). Already during the nineteenth century, criminal acts were incorporated into the criminal laws of numerous countries, the main goal of which was the protection of minors. The twentieth century is characterized by the expansion of the criminal zone for the purpose of protecting minors, the introduction of new criminal acts, and in criminal law theory, the concept of criminal law protection of minors is increasingly used (Stevanović, 2015, pp. 8-9).

The development of the protection of minors from abuse, neglect and exploitation, i.e. from all forms of violence that threaten and injure their physical, sexual and psychological integrity, is particularly encouraged and advocated by the movement for children's rights, which is embodied in a whole series of international documents. Today, it is indisputable that the rights of the

child, as a special part of human rights, have a universal character. However, by separating minors as special subjects of law, and formulating independent rights that protect their personal assets, the classic protective attitude towards these persons is overcome and enables their influence on their own position (Stevanović, 2015, p. 10). However, it should also be emphasized that the state and its organs, and above all the criminal justice system as such, are positioned as the ultimate guarantors of those rights and the protection of children, so that they assume the function of representing those rights in situations where they are threatened, that is, violated by the actions of parents or other persons and strongly react to such violations by sanctioning them.

With that, it can be stated that almost all modern legislation tends to introduce special rules when it comes to lega , and especially criminal-legal protection of minors. The *ratio legis* of this particularity in prescribing and incriminating is based on the social need for a stronger and more effective reaction when persons of the youngest age categories are injured or endangered. This is because minors are in many situations more vulnerable than adults. All this led to the emergence and development of the concept of "justice tailored to the child", which is increasingly gaining momentum internationally, and especially in European legislation (Samardžić, 2018, p. 18 et seq.).

In the light of the above, this paper will point to the normative framework of regulation of the position and rights of the child in the Republic of Serbia. Finally, the paper tries to provide an overview of the (legal) position of children as victims of domestic and sexual violence, but also procedural and legal elements of the appearance of a child in criminal proceedings as an injured person.

2. National nomative framework Regulations on children's rights and children's position as victims of certain criminal offenses

Proceeding from and respecting the assumed international legal obligations, the domestic constitution-maker and legislator, adopting or following the set international legal standards, strongly intervened in the field of children's rights prescribing and regulating general issues of children's rights, but also the position of children as victims of crime, and as victims of specific criminal acts. Thus, in addition to the general qualified incriminations contained in the Criminal Code of the RS, the legislator regulated the position of the child with special regulations of the criminal legislation, both substantive and procedural.

As the rights and position of the child in the national legislation are regulated by over 80 legal texts (Analysis, 2011, pp. 5-9), this chapter will refer only to the constitutional legal framework regulating the rights of the child, and will present the relevant criminal law regulation.

2.1. Constitutional regulation of the rights and position of the child

The Constitution of the Republic of Serbia, as the highest legal act, establishes the foundations of our legal system and guarantees basic human rights and freedoms in the most general way. By guaranteeing human rights, the state in fact guarantees a limit that it must not cross, if it rests on democracy, because even though democracy is not reduced to human rights, without them there is no democracy (Marković, 2013, p. 460). The second part of the Constitution is devoted to human rights, which is precisely called human and minority rights and freedoms. Within this part of the Constitution, human rights that fall within the domain of family law belong to the group of social rights, which are otherwise considered new rights (Marković, 2013, pp. 483-484).

Although, essentially, the Constitution of the Republic of Serbia from 2006 contains only one provision that explicitly refers to children's rights, it can be said that the Constitution from 2006 sets a broad normative framework for the special protection of children in the overall legal order. Thus, for the first time in the constitutional and legal history of Serbia, the Constitution explicitly talks about the rights of the child in Article 64 , which bears the title "Child's Rights" (Analysis, 2011, p. 10). The Constitution guarantees children "the right to enjoy human rights appropriate to their age and mental maturity" (The Constitution of the Republic of Serbia, 2006). Also, in this article, the Constitution stipulates that the rights of the child are regulated by law and guarantees the child a number of individual rights, e.g. the right to a personal name, registration in the register of births, the right to know one's origin, the right to preserve one's identity, protection from psychological, physical, economic and any other exploitation or abuse, equal rights of children born in marriage and out of wedlock. Article 65 of the Constitution prescribes the special protection of the family, mother, and single parent, and in this sense special protection is guaranteed for children who are not cared for by their parents and children with disabilities in mental and physical development, as well as the protection of children from child labor, i.e. prohibition of work for children under 15 years of age and prohibition of work for children under 18 years of age in jobs that are harmful to children's morals or their health.

Although the Constitution does not recognize the basic principles of the Convention on the Rights of the Child, one should keep in mind the constitutional provisions of Articles 16 and 18 of the Constitution that ratified international treaties are part of the internal legal order and are directly applicable, and that, in accordance with the provisions of Article 18, paragraph 3 of the Constitution , on human and minority rights are interpreted in favor of improving the values of a democratic society, in accordance with valid international standards of human and minority rights, as well as the practice of international institutions that supervise their implementation. With that, it can be said that the Constitution, implicitly, leaves the door open for the influence and immediate application of international standards regarding the rights of the child, setting, at the same time, the basis and normative framework for the legal regulation and protection of the child in the legal order.

2.2 Criminal-legal protection of the position of the child as a victim of certain criminal acts

Guided by everything previously stated, and starting from the standards and rules contained in international legal documents, as well as the provisions of the Constitution, the domestic legislator implements the concretization of the proclaimed protection of children, first of all, through criminal legislation, by prescribing more than 30 actions in the Criminal Code of the RS in which the property of the injured party as a minor is an important characteristic of the nature of the criminal offense (compare with Petković & Pavlović, 2016, p. 188), and it is mostly about crimes against life and limb (such as aggravated murder from Article 114 of the CC, murder of a child during childbirth from Article 116 of the CC, etc.), against sexual freedom (such as rape from Article 178 of the CC, adultery with a child from Article 180 of the CC, etc.), and against marriage and family (such as domestic violence from Article 194 of the CC).

The domestic legislator tried to regulate the issue of improving the rights and protection of the child's position in criminal law with both general and special criminal legislation.

On the other hand, the protection of the procedural position of the child in criminal proceedings as an injured party is provided by the Law on juvenile offenders and the criminal protection of minors.

3. Protection of children as victims of sexual abuse and sexual offenses

The criminal law protection of minors in the area of sexual relations was implemented in our law by prescribing and applying the provisions of chapter XVIII of the Criminal Code, which is entitled "Criminal offenses against sexual freedom". Some of these crimes can be committed against both adults and minors, with the fact that the passive subject is a minor will be a qualifying circumstance. However, in this group there are also crimes in which this circumstance is a feature of the crime, so they can only be committed against a minor (Đorđević & Simeunović Patić, 2015, p. 236). Therefore, we can see that the internal systematization of the Criminal Code does not specifically single out, as a separate entity, the protection of minors from sexual offenses, but sexual violence against minors, that is, children, is a qualifying circumstance in most criminal offenses (Pavlović, 2013, p. 237). Thus, following the systematics of the Criminal Code from chapter XVIII, where all criminal offenses against sexual freedom are listed, among them, as criminal offenses of sexual abuse and exploitation of a child, we can define : 1. child abuse (Article 180), 2. mediation in prostitution (Article 184, paragraph 2), 3. displaying, obtaining and possessing pornographic material and exploiting a minor for pornography (Article 185), 4. inducing a child to attend sexual acts (Article 185a), 5. using a computer network or communication by other technical means to commit criminal acts against sexual freedom towards a minor (Article 185b), (Criminal Code of the RS, 2005).

From the presented incriminations, we can conclude that the domestic legislator, from the aspect of substantive legal criminal incriminations, acted in accordance with the assumed international obligations and in the spirit of the international legal standards.

Also, with the changes to the criminal legislation from 2019, more precisely, according to the provisions of Article 43 of the Criminal Code, life imprisonment is prescribed as a type of punishment, stating: "For the most serious crimes and the most serious forms of serious crimes, life imprisonment can exceptionally be prescribed in addition to the prison sentence", such as: aggravated murder, rape, sexual act on a child, a weak person, etc. Certain limitations were also set when it comes to the sentence of life imprisonment: that it cannot be imposed on a person who at the time of the commission of the criminal offense did not reach the age of 21, and in cases where the possibility of mitigating the sentence or the existence of some grounds for exemption from penalties. These amendments are known to the public as "Tijana's Law",

emphasizing stricter punishments for all perpetrators of crimes in which children are the victims (Ikanović & Vasić, 2020, p. 180).

The position of children "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 nature of the matter they regulate, special laws" (Dragojlović, 2022, p. 87). It should be pointed out that, when it comes to this group of criminal offenses against minors and children, the Law on Special Measures for the Prevention of the of criminal offenses against sexual freedom against minors (hereinafter: ZPM) adopted in 2013 (Pavlović, 2013, p. 237; Đorđević & Simeunović Patić, p. 236), which is also known as "Maria's Law" (Pavlović, 2013, p. 286).[2]

This law applies to perpetrators who have committed any of the following crimes against minors: rape (Article 178, paragraphs 3 and 4 CC); abuse of an incapacitated person (Art. 179, paragraphs 2 and 3 CC); adultery with a child (Art. 180 CC); abuse of position (Art. 181 CC); illicit sexual acts (Art. 182 CC); pimping and facilitating sexual intercourse (Art. 183 CC); mediation in the practice of prostitution (Art. 184, paragraph 2 CC); showing, obtaining and possessing pornographic material and exploiting a minor for pornography (Art. 185 CC); inducing a minor to attend sexual acts (Art. 185a CC); the use of a computer network or communication by other technical means to commit crimes against sexual freedom against a minor (Art. 185b CC), which practically represents all crimes from Chapter XVIII of the Criminal Code, i.e. those forms of these crimes committed against a minor (Dragojlović, 2022, p. 88).The separation of these criminal acts and their placement in a special regime is motivated by the desire to treat the perpetrators of these

[2] Dragojlović (2022, p. 88) points out that "as decisive reasons for the adoption of this law, Article 37 of the Convention of the Council of Europe on the Protection of Children from Sexual Exploitation and Sexual Abuse, which was confirmed by the National Assembly in May 2010, obliges member states of this convention. that in order to prevent and prosecute 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".

criminal acts in a way that would prevent the perpetrator from repeating the crime later, after the punishment has been served, and in this way to ensure enhanced protection of minors from this type of crime, while the criteria for distinguishing these crimes is completely clear – namely, they are crimes against sexual freedom with the condition that they were committed against a minor (Đorđević & Simeunović Patić, p. 237) .

ZPM, as a special-preventive legal mechanism (Pavlović, 2013, p. 296), foresees that certain institutes of the general part of the Criminal Code, such as mitigation of punishment, parole and statute of limitations, cannot be applied to the perpetrators of the aforementioned criminal acts against minors. In addition, the commission of one of these criminal acts entails the occurrence of certain legal consequences of the conviction, the application of special measures against the perpetrator and the keeping of prescribed records of the perpetrators of these criminal acts. However, the provisions of the ZPM "will not be automatically applied to all perpetrators of the criminal acts listed in Article 3 of the ZPM" (Dragojlović, 2022, p. 89). In order "for the provisions of this law to be applied, it is necessary that the qualifying circumstance be met during the execution of the criminal act: that the act was committed against a minor, that is, that the minor was harmed by the criminal act" (Dragojlović, 2022, p. 89).

It seems that the most dilemma, at least as far as the professional public is concerned, is caused by the provision of Article 5 of this law entitled "Prohibition of mitigation of punishment and parole and non-statutory limitation of criminal prosecution and execution of punishment". It prohibits the application of the three general institutes of criminal law to the perpetrators of any of these crimes. The biggest problem is created by the first of the mentioned three prohibitions, the prohibition on mitigation of punishment. It further complicates the situation regarding the already existing ban on mitigation of punishment from Article 57, paragraph 2, which was introduced in the Criminal Code, which refers to the following criminal acts, i.e. some of their forms: kidnapping (Article 134, paragraphs 2 and 3), rape (Art. 178), adultery of a helpless person (Art. 179), sexual act with a child (Art. 180), extortion (Art. 214, paragraphs 2 and 3), unauthorized production and distribution of narcotic drugs (Art. 246, paragraphs 1 and 3), illegal crossing of state borders and people smuggling (Art. 350, paragraphs 3 and 4) and human trafficking (Art. 388). It is observed that some of the mentioned criminal offenses are from the Criminal Code (rape, Article 178, paragraphs 3 and 4 of the CC; rape of a helpless person, Article 179, paragraphs 2 and 3 of the CC and rape of a child, Article 180 CC) already contained in this

provision of the CC, so listing them in that context in this law was superfluous (Ristivojević, 2013, p. 331).

However, the other crimes from this law were not in the regime of the prohibition of mitigation of punishment until its adoption, and thus the circle of criminal offenses for which it is no longer possible to mitigate the punishment has been expanded. With these provisions of the CC and ZPM on the prohibition of mitigation of punishment for certain criminal acts, mitigation of punishment has ceased to be a general institution in our criminal law because it is not applied to all, but only to some (albeit a much larger number) of criminal offenses (Delić, 2010, p. 137).

Such solutions on the mitigation of punishment from the Criminal Code and the Law on Special Measures for the Prevention of Criminal Offenses Against Sexual Freedom against Minors not only reduce the court's room for maneuver in certain situations, but also disrupt the existing relationships between the prescribed punishments for certain criminal offenses, leading to illogical and unfair situations. Thus, the perpetrator of the criminal act of rape, when the victim is a minor (Art. 178, paragraph 3), can be sentenced to a minimum of five years in prison, even if the crime was attempted or the perpetrator was significantly impaired (no mitigation), and if the same perpetrator killed the same minor, he could (with the mitigation allowed here) be punished for at least three years (Đorđević & Simeunović Patić, 2015, p. 238). The illogical situations that can lead to the application of provisions on the prohibition of mitigation of punishment for certain criminal offenses can sometimes in practice lead the court to, guided by the principle of fairness, look for a way out of the situation in changing the legal qualification of the offense (Stojanović, 2012, p. 10), standing to the point of view that it is more acceptable to unjustifiably determine a milder legal qualification of the act, than to impose an unfairly high sentence on the perpetrator for the act he actually committed. Such provisions directly disavow certain institutes of the general part of the CC and cancel the difference between, for example, attempted and completed criminal offense, complicity and execution, significantly reduced sanity and insanity, etc. (Ristivojević, 2013, p. 326).

The main "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. 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" (Law on Special Measures for the Prevention of the of criminal offenses against sexual freedom against minors, 2013). Paragraph 2 of this provision stipulates that "the legal consequences of the conviction from paragraph 1 of this article shall take effect 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 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 legal consequences of conviction in these cases. This type of prescription can only be justified from the perspective 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" (Dragojlović, 2022, p. 91).

Moreover, Article 7 of the ZPM foresees special measures "that are imposed on a convicted person, 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 and 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 judgement, 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 refer, and the request from 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".

In addition, Article 13-15 of the ZPM stipulates that "the ministry responsible for judicial affairs keeps special records on persons convicted of criminal offenses from Article 3 of the Law. This is the de facto registry of sex offenders against minors" (Dragojlović, 2022, p. 93), which is referred to in the SE Convention, i.e. in its Article 37. From this, it can be concluded that, from a normative point of view, Serbia has assimilated its criminal legislation for international legal obligations. However, according to Dragojlović (2022, p. 87 et seq.), even after 10 years since its adoption, the ZPM has not yet started to be applied in its entirety, so as a first step it would be necessary to start with the full implementation of this law.

4. Domestic violence and protection of the child as a victim

Violence against children is a phenomenon as old as human civilization, which leaves multiple and long-lasting consequences on the development of the child as a person, and often ends in death. Due to the child's specific biopsychological status, which is accompanied by helplessness, dependence and vulnerability, there is a danger and risk of the child's victimization by various forms of violence. A child can be victimized directly, when he is a direct victim of violence, or indirectly, when he witnesses violence against other family members. Violence against children represents the most difficult form of family violence and violence in general, considering the physical and psychological characteristics of the victims, the relationship of trust, emotional connection and the duty of care by those to whom children are entrusted (Puhača, 2021, p. 24).

Broader understandings of the term "abused child" include a child whose normal growth and development is prevented and threatened. According to these explanations, abuse includes not only brutal physical punishment of children, which can lead to severe physical injuries and even death, but also gross neglect of the child's physical and psychological needs (Radovanović, 2002, p. 99). In one of the broadest definitions of abuse, it is especially emphasized that it is a continuum – long-term behavior that has taken the form of a pattern that violates or threatens the child's right to life and development and that includes physical abuse, sexual abuse and child neglect (Obretković, 1997, p. 9).

The General Protocol for the Protection of Children from Abuse and Neglect, under neglect, is the concession of the care provider – the parent, i.e. another person who has assumed parental responsibility or the obligation to care for the child, even for a short time, to ensure the child's development in all areas: health, education, emotional development, nutrition, housing, and safe living conditions, within the reasonably available means of the family, or care provider, which causes or is likely to impair the child's health, or physical, mental, spiritual, moral or social development (Bjelajac & Merdović, 2019, pp. 196–197). Physical abuse of children, according to the General Protocol, is that which leads to actual or potential physical injury to a child, as a result of an act or omission, which can reasonably be considered to be within the domain of control by a parent, or a person in a position of responsibility, power or trust in relation to the child (Puhača, 2021, p. 25). Under psychological abuse of children, which can occur independently, or accompanied by some other form of abuse, is meant such a relationship or behavior of the parents that neglects, endangers, underestimates, insults or verbally attacks the child's personality and manifests negative feelings, or deprives the child of support (Milosavljević, 1998, p. 43), the most common forms of psychological abuse of children are: locking them in a dark basement, leaving the child alone in the apartment, insults, cursing, alcoholism of the father or mother, killing a beloved animal and the like.

And in protecting the family, that is, family members from violence, the domestic legislator intervened with the instruments of criminal legislation and provided, as a special offense from Article 194 of the CC, the criminal offense of domestic violence.[3]

In the light of Article 194 of the CC, the term domestic violence means behavior by which one family member endangers the physical integrity,

[3] Article 194 of the CC: (1) Whoever, by using violence, by threatening to attack life or body, by insolent or reckless behavior endangers the tranquility, physical integrity or mental state of a member of his family, shall be punished by a fine or imprisonment of up to one year (three months to three years) (2) If during the execution of the offense referred to in paragraph 1 of this article, a weapon, dangerous tool or other means suitable for seriously injuring the body or seriously impairing health was used, the perpetrator will be punished with imprisonment from three months to three years (six months to five years). (3) If, as a result of the acts referred to in paragraphs 1 and 2 of this article, serious bodily injury or severe health impairment occurred, or were committed against a minor, the perpetrator shall be punished by imprisonment from one to eight years (two to ten years). (4) If, as a result of the acts referred to in paragraphs 1, 2 and 3 of this article, the death of a family member has occurred, the perpetrator shall be punished with imprisonment of three to twelve years (three to fifteen years) (5) Whoever violates the protection measures against domestic violence determined by the court on the basis of the law, shall be punished by a fine or imprisonment of up to six months (three months to three years and a fine).

mental health and tranquility of another family member. This includes in particular: inflicting or attempting to inflict bodily harm, causing fear by threatening to kill or causing bodily harm, forcing sexual intercourse, inducing sexual intercourse or sexual intercourse with a person under the age of 14 or a disabled person, restricting freedom of movement or communication with third parties, insults, as well as any other insolent, reckless and malicious behavior.

However, looking at the incrimination from the Criminal Code, we can conclude that special protection is provided to a child only by the fact that an attack directed against a child (that is, a minor) is qualified as a more serious form of this criminal offense, while special protections and incriminations, or special measures, such as there are no acts against sexual freedom.

The main regulation that contains criminal material and procedural provisions on the position of minors in criminal proceedings is the Law on Juvenile Offenders and Criminal Protection of Minors (ZOM), which 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 ZOM 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). Thus, therefore, ZOM represents the lex specialis in relation to the Criminal Procedure Code, while the provisions of the CPC, as well as other regulations in the field of criminal law, pursuant to Article 4 of the ZOM, are applied subsidiarily to those issues that remain outside the ZOM regulations, i.e. they will be applied when they do not contradict the provisions ZOM.

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).

It is extremely important to point out that, in accordance with the provisions of Article 157 (The Law on Juvenile Offenders and Criminal Protection of Minors, 2005), 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, and to enable a trial in the shortest possible time,

without violating the defense rights, and so that the child's recovery and social reintegration in society.[4]

5. Concluding considerations

The importance of protecting the rights and position of the child is exceptional. This is particularly evidenced by the intensive and extensive activity of the international community in terms of regulating the rights, position and status of children when it comes to certain negative social phenomena such as crimes against sexual freedom, prostitution, child trafficking and the like.

As we could see, as a result of extensive normative activity at the international level, both universal and regional, high standards have been set regarding the material and procedural position of the child in proceedings for various crimes. Contracting states are generally required to prescribe certain minimums, criminalize certain actions and ensure respect for the best interests of the child. These efforts are particularly embodied in the UN Convention on the Rights of the Child from 1989 and the so-called Lanzarote Convention of the Council of Europe.

Acting in accordance with international legal obligations, our country has included in its legal texts certain incriminations of criminogenic actions where women appear as persons injured by a criminal act. Also, Serbia has passed special punitive-preventive laws, which aim to deter from committing criminal acts against the sexual freedom of minors, but also to impose particularly heavy sanctions on those who commit such acts.

In the field of child protection from domestic violence, however, the domestic legislator has not yet developed its normative activity to the full extent, from the aspect of criminal law protection. Observing de lege ferenda,

[4] Aggravated murder (Art. 114), inducing suicide and assisting in suicide (Art. 119), grievous bodily harm (Art. 121), kidnapping (Art. 134), rape (Art. 178), sexual abuse of a helpless person (Art. 179), sexual abuse of a child (Art. 180), sexual abuse of position (Art. 181), illicit sexual acts (Art. 182), pimping and facilitating sexual intercourse (Article 183), intermediation in prostitution (Art. 184), showing pornographic material and exploiting children for pornography (Art. 185), extramarital union with a minor (Art. 190), taking of a minor (Art. 191), change of family status (Art. 192), neglect and abuse of a minor (Art. 193); domestic violence (Art. 194), failure to provide maintenance (Art. 195), incest (Art. 197), robbery (Art. 205), aggravated robbery (Art. 206), extortion (Art. 214), enabling the consumption of narcotic 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).

the domestic legislator would be justified in passing a special preventive-punitive law like the Law on Special Measures when it comes to criminal acts against the sexual freedom of minors.

Phenomena such as attacks on the sexual freedom of children and minors in general, as well as domestic violence where children often appear as victims, whether direct or indirect, cannot be eradicated by mere normative prescriptions. It is only a necessary but not sufficient step in the fight against these phenomena. Therefore, it would be desirable to start applying the existing laws in their entirety, first of all by forming a register in terms of the Law on Special Measures, and further consistent and full implementation of these laws, but also deeper cooperation of national and international police agencies, which will be managed only by one principle: the best interest of the child.

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POJEDINI ASPEKTI POLOŽAJA I PRAVA DETETA KAO ŽRTVE KRIVIČNIH DELA

REZIME: Deca, kao i maloletnici uopšte, predstavljaju jednu od najosetljivijih društvenih grupa, te, sledstveno, krivična dela naročito teško pogađaju decu. Iz ovog razloga, domaći zakonodavac, kao i većina drugih, kao teži ili najteži oblik određenog krivičnog dela, odnosno kao kvalifikatornu okolnost inkriminiše kada je delo učinjeno prema detetu. Međutim, pored toga što u okviru krivičnog materijalnog zakonodavstva propisuje kvalifikovane oblike krivičnih dela kada se kao žrtva javljaju deca, zakonodavac, u okviru maloletničkog krivičnog zakonodavstva, ali i drugih specijalnih propisa, propisuje i druge mere uperene prema poboljšanju i zaštiti položaja deteta u krivičnom postupku. Ovo zbog toga što zaštita dece, kao žrtava krivičnih dela, nije samo pravno pitanje, već ono predstavlja društveni i moralni imperativ koji se mora shvatiti ozbiljno kako bi se osiguralo da sva deca dobiju neophodnu zaštitu koja je potrebna za njihov rast i razvoj. U smislu iznetog, ovaj rad ukazuje na regulisanje

položaja deteta kao žrtve krivičnog dela, prvenstveno na nacionalnom nivou, polazeći od opštih standarda zaštite, do pojedinih rešenja u nekim od specifičnih pojavnih oblika kriminaliteta gde se deca često javljaju kao žrtve – porodično i seksualno nasilje.

Ključne reči: *zaštita dece, krivičnopravna zaštita, nasilje u porodici, seksualno nasilje.*

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THE FIRST DEGREE MURDER IN A CRUEL MANNER

ABSTRACT: The first degree murder belongs to the group of the heaviest criminal offences punishable by the heaviest penalties. Basically, the first degree murders have all the characteristics which are common to every murder, i.e. the unlawful deprivation of another person's life. But, the murder accompanied by a certain qualifying circumstance makes it heavier and socially more dangerous than an ordinary murder. In this paper, we will look back and explain in more detail the first degree murder in a cruel manner, which is a complex criminal offence, where, on the one hand, cruelty means taking the victim's life in such a way that it causes the excessive pain and suffering, while, on the other hand, it is necessary that a perpetrator also shows a special emotional relationship towards the pain and suffering (in the form of feeling pleasure, enjoying them, the absence of pity, etc.). We will analyze the hypothesis of the criminal offence of the first degree murder committed in a cruel manner to be planned and a person for the attempt of such an offence to be punished. We will draw a parallel between the criminal act of murder and the first degree murder including the fact whether this offence was committed in a conscientious or unsconscientious way. We will also consider the issue of the organized crime and how often this type of an offence is committed in criminal groups. The aim of the research is to meet the meaning and qualifying circumstances being specific for this offence as well as to see how this offence is qualified in practice. It also covers the issue of its sanctions and

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how the court evaluates certain findings and opinions in the proceedings including the aggravating circumstances relevant for determining the amount of the punishment.

***Keywords**: criminal offence of the first degree murder, cruelty, murder, organized crime, law.*

1. Introduction

First – degree murders belong to the category of the most serious offences that carry the most severe punishments. This offence belongs to the group of offences against life and and body which are incriminated in the thirteenth chapter of the Criminal Code of the Republic of Serbia. Basically, first – degree murders have all the characteristics which are common to every murder, that means, unlawful deprivation of the life of another person, but the murder is accompanied by a certain qualifying circumstance which makes it heavier and socially more dangerous than an ordinary murder (Bećirović, 2014, p. 202). Qualifying or heavier murder exists when premediated murder is committed in such a way or under such circumstances that it gives a greater degree of social danger, for which the law orders a heavier punishment (Jovanović, Đurđić & Jovašević, 2004, p. 110).

In our criminal legislation we distinguish ordinary murder, which is incriminated in Article 113 of the Criminal Code of the Republic of Serbia, and first – degree (qualifying) murder, where their distinction is made on the basis of sveral criteria. First – degree murder consists of several forms that can be classified into the following groups:

1. First – degree murder according to the method of execution, which includes:Murder in a cruel and insidious manner
   a) Murder with reckless, violent behaviour
   b) Murder in a way that intentionally endangers the life of another person
   c) Murder during the commission of the crime of robbery or robber's theft
2. First – degree murder according to the motives of execution, which includes:
   a) Murder for self – interest
   b) For the purpose of committing or concealing another offence
   c) Out of ruthless revenge or other base motives

3. First – degree murder according to the object of the attack, which includes:
   a) Murder of an official or a military person in the performance of official duty
   b) Murder of a judge, public prosecutor, deputy public prosecutor or a police officer in connection with the performance of duty
   c) Murder of a person who performs tasks of public performance in connection with the tasks performed by that person
   d) Murders of a child or a pregnant woman
   e) Murder of a family member who was previously abused by the perpetrator
   f) Premediated murder of several people and it is not the murder committed in a fit of passion, murder of a child during child-birth or mercy killing (Čejović & Kulić, 2014, p. 388).

The offence is incriminated in Article 114 of the Criminal Code (the Criminal Code of the Republic of Serbia, 2005). For this offence, the law orders the punishment of the imprisonment for at least ten years or life imprisonment, and the possibility of mitigatring the sentence in the sense of Article 57, paragraph 2 of the Criminal Code is excluded for this offence.

Any person can be the perpetrator of all the forms of the offence of first – degree murder, and in terms of guilt, all the elements must be met in order for this offence to exist.

In terms of guilt, it is necessary that the perpetrator of the offence was sane, the moment that the court appreciates during the proceedings is the moment of the commission of the offence, which means that the perpetrator was able to understand the significanse of his offence and to manage his actions. Sanity is determined from the findings of the expert neuropsychiatrist. From this finding it can be concluded whether there was sanity, or insanity (Actiones liberae in causa), that means, whether the perpetrator brought himself into a state of insanity (Actiones liberae in causa), by using illegal substances (drugs, alcohol), or whether the perpetrator was in a state of insanity at the time of committing the offence. If the perpetrator was in the state of insanity (Actiones liberae in causa), where he brought himself into this state, the court would consider this as an aggravating circumstance in the proceedings, and on this occasion, there must be the evidence which proves the intention that the perpetrator wanted to get drunk and commit the offence in that state. The concept of insanity (Actiones liberae in causa), is found in Article 24 of the Criminal Code, which states: “The guilt of the perpetrator of the offence who,

through the use of alcohol, drugs or in other ways, was brought into a state in which he could not understand the significance of his offence or manage his actions, is determined according to the time immediately before bringing himself into that state." The sentence cannot be reduced to the offender who, under the circumstances from the Paragraph 1 of this Article, committed the offence in the state of significantly temporary insanity."

Also, if, according to the findings of the experts, it was determined that the offence was committed by a person who was insane, (a person who was not aware of his offence and could not manage his actions), on the basis of the interpretations and the action of the insane perpetrator, it would be possible to qualify this as an unlawful act which is ordered by law afirst – degree murder in a cruel manner.

Certain sadistic characteristics of the personality are also present in a mentally ill person, which is enough to qualify the action of an insane person in this way.

"An insane person acts with intention, too. There is also his awareness of the act, admittedly, it is clouded, incorrect, deformed, and there is also the will created on that awareness. Therefore, it is about the intention in a natural sense, and not about the intention as a form of guilt" (Zlatarić, 1956, p. 160).

However, as far as the insanity is concerned, the fact how the perpetrator's actions are qualified is not of great importance, because in these cases, the perpetrators are sentenced to the safety measure of mandatory psychiatric treatment and custody in a health institution, which is of the indefinite duration.

In Kurir (2022) it was announced that "the perpetrator killed his mother with an ax in the family home, where, by the decision of Higher Court in Novi Sad, the measure of mandatory psychiatric treatment and custody in a health institution was imposed. The indictment charges the perpetrator that on 2nd or 3rd June last year, in a state in which he was not capable of understanding the significance of his act, which means, in a state of insanity, in an insidious and cruel manner, he took the life of his mother with whom he lived in the same house. It is attributed to him that he took an ax from the utility room, approached the bed in which the unfortunate woman was lying, so that she could not see him, and without any reason hit the area of her head, but also the area of her hand that she raised, probably to defend herself, nine times with the ax. After suffering intense pain, she passed away a few minutes later.

After the cruel murder, her son wrapped the ax in the paper and hid it in the shed among piles of wood, then released gas into the house, locked it and left the scene by bicycle."

2. First – degree murder in a cruel manner

In Article 114 paragraph 1 Point 1 of the Criminal Code it is ordered that there is one of the forms of committing first – degree murder – the murder in a cruel manner, which will be explained in more detail in this paper.

Namely, the murder in a cruel manner is the deprivation of life of another person, by which a victim undergoes excessive and unnecessary physical and psychological suffering and pain of great intensity. Since every deprivation of life is accompanied by the inflicting pain and causing fear, in this case, pain and suffering are inflicted with the aim of making the victim suffer as much as possible, so that they exceed the pain and suffering which accompany the ordinary murder according to their intensity and duration.

For the existence of this act it is necessary for the objectively cruel and horrific actions to be undertaken and that the victim is in a conscious state so that he experiences and undergoes the cruelty of these actions with great pain, fear and suffering. It is also necessary that the perpetrator of the act is aware of the cruel and inhuman acts that he willingly undertakes, by which he presented himself as a reckless, bestial and bloodthirsty man[1] (Atanacković, 1985, p. 135-136).

In the case of this offence which was committed in a cruel manner, it is necessary for qualifying circumstances, both subjective and objective ones to exist, which stand on the side of both the perpetrator and the execution of the offence itself (Ćirić, 2000, pp. 68).

- The subjective circumstance is related to the the perpetrator's personality
- The objective circumstance is related to the committed offence.[2]

The subjective circumstance is related to the reflection of the perpetrator's personality, which means, the lack of consideration towards the victim. The perpetrator must be aware of the fact that he causes the pain. He acts cold-bloodedly and he tortures the victim with pleasure, his cruelty consists of

[1] If the perpetrator was aware that he inflicted dangerous injuries to the victim by the actions he undertook with the means suitable for the person to be deprivated of his life, and if he was aware of molesting the wictim during a long period of time, and that the victim suffered, this is a murder in a cruel manner (the judgement of the Supreme Court of Serbia 927/ 90).

[2] The basis for the qualification of the offence of the murder in a cruel manner lies not only in the way the act was committed, but also in the characteristic of the perpetrator's psychological state during the committing the act itself (the judgement of the Supreme Court of Kosovo Cr. case. 499/81).

insensitivity towards the torment, suffering and pain which are inflicted on the victim or of his own pleasure, enjoyment or of the pleasure of torturing the victim (Simić & Petrović, 1998, p. 24). The direct intention is necessary for this form of first – degree murder, which means that the perpetrator knows that with his action he accomplishes all the essential elements of the existence of the offence, and wants the execution of the offence, and as far as the consequence is concerned, he wants it to occur.

The question arises whether this act can be carried out with the possible intention. Bearing in mind that the perpetrator, as a rule, acts cold-bloodedly, and that he enjoys torturing the victim, this excludes any possible intention. Perhaps the opinion that the perpetrator sometimes inflicts severe physical injuries to the victim consciously, accompanied with severe pain and suffering, and that he is aware of the fact that by continuing the torture, he may cause the death of the victim, so he agrees to it, can be accepted. However, as a rule, the direct intention is needed for this form of first – degree murder (Stojanović, 2006, p. 20).

In order for this first – degree murder to exist, it is necessary that the victim was in the state to feel the suffering which was inflicted on him, for example, when the perpetrator stabs the victim several times, and the wictim is in a conscious state, and the treshold of fear and pain is extremely high, where he fears for his own life and tries to defend himself, all of this represents the qualifying circumstances of this offence and "a cruel act must be undertaken before the completion of the fatal consequence caused by this action" (Bock, 2018, p. 43)

The massacre of the victim, after he has lost consciousness and does not feel all the suffering inflicted on him, is not a feature of this offence. In the proceeedings the subsequent massacre or the torture of a person who is in an unconscious state is an aggravating circumstance which is assessed when determining the punishment, and cannot be assessed as the act of committing the offence of the murder in a cruel manner, because for this act it is necessary that the person who has been deprived of his life has to feel the pain and suffering, and the perpetrator has to enjoy them.

"Also, contrary to this understanding that it is necessary for the victim to be in a conscious state in which he suffers immeasurable pain, torment and suffering, for the existence of this act, in the legal theory you can also find the understanding according to which the cruel murder is possible even in the case of the victim who has already lost his consciousness, and does not feel the pain, provided that the method of taking his life represents the reckless, unscrupulous, gradual and cold-blooded killing of the helpless victim. In that

sense, there can be the cruel murder even when the victim has already been killed, so it is difficult to desecrate the corpse because this act also causes the increased horror and disgust, regardless of the fact that the victim did not feel the suffering and pain" (Čejović, 1986, p. 290).

Recklessness, as a special component of the perpetrator's subjective attitude towards the act, implies the attitude of the perpetrator towards the murder, which puts him into a special category of the killers who are deprived of any sense of responsibility for his behaviour.

"Also, this form of the offence does not exist when the perpetrator wants to torture the victim or believes that he does that, if, objectively observed, his acts do not cause suffering to the person who is deprived of his life. In that case, the attempt of this offence is possible (Stojanović, 2014 p. 10).

As far as the objective circumstance of this offence is concerned, it represents the infliction of excessive or unnecessary suffering to the victim before he was deprived of his life. This suffering is "the one that goes beyond that suffering which accompanies every deprivation of life" (Stojanović, 2014, p. 9).

That excessive or unnecessary suffering is, for example, when 133 wounds were inflicted onto the victim in the form of stabs and cuts, and during their infliction the victim suffered physical and psychological pain of high intensity, which represents the objective element of cruelty" (The judgement of the Supreme Court of Serbia Cr. case. 1247/98).

First – degree murder in a cruel manner in the practice of the court is most often considered to be: The murder connected with the torture of the victim, accompanied with the use of fire or water, the murder through slow or long strangulation or suffocation, the murder by starvation, by not giving the food, water or necessary medicine or medical help (Jovašević & Ikanović, 2012, pp. 23-27).

In judicial practice the question arses whether the described pain and suffering should be objectively cruel, terrible, brutal, excessive, or the victim should directly subjectively experience the feeling in that way. In any case, when assessing whether there are such pain and suffering, the finding and opinion of forensic medicine experts (traumatology specialty) are of great help to the court.[3]

[3] The objectification of the strength and intensity of the pain and suffering can be done on the basis of the injuries that cause that "great", "above average" pain and they cause death in the end, which indicates that medical expert finding and opinion are of crucial importance in that case.

The expert does not declare himself about cruelty because that conclusion is made by the court, but he gives his opinion about the intensity and the duration of the pain and suffering which the victim suffered.[4]

In that way, in the proceedings against Marjanović, who was accused of having committed first – degree murder in a cruel manner which is incriminated in Article 114, paragraph 1, point 1 of the Criminal Code, and according to Euronews Serbia, (2022) "the court committee of the Higher Court in Belgrade sentenced Marjanović to a maximum sentence of 40 years in prison for the cruel murder of his wife. As it is stated, during the trial, the expert opinion showed that the killer had strong emotions towards the victim, when the manner and the intensity of the injuries were taken into account. It was also stated that the murder had been committed by luring the victim into the canal on the embankment and inflicting multiple injuries in the area of her head with a blunt object. The court considers that the defendant wanted to cover up the crime by reporting to the police that the injured party had disappeared and that he simulated concern then.

From this example we conclude that the defendant planned the murder, which he carried out with direct intent, and he was aware that the execution of it could have serious consequences, but he still wanted to carry it out. And by simulating the concern and by reporting the disappearance, he showed insensitivity, cold-bloodedness and calculation.

According to the current events, we have the examples where the execution of the offence of first – degree murder in a cruel manner also takes places through the organized crime, where the perpetrators of this offence are organized criminal groups, whose goal is to gain power and money, and as a consequence of these goals, first – degree murders are carried out.

We have an example which was published on the Mondo portal (2022), actually, the statements of the associate witnesses, which were presented at the main trial, and were related to the offence of first – degree murder, where it is mentioned that "the victim was first strangled with the hands, and that in the end it was done with a more humane approach, "by strangling the victim with a cable, and then by cutting his throat with a knife, and on that occasion a lot of blood came out." This is one of the examples of how organized criminal groups carry out offences. Their characteristics are: insensitivity and

[4] A forensic medical expert can provide his expert opnion only about the medical side of the problem, but he cannot get involved in the consideration of legal issues. He does not have professional qualification for the legal side of the problem and he cannot discuss about the intent of the perpetrator of the offence, cruelty, remorse, guilt, complacency, intention, negligence, etc. (Simić, 2007. p. 21).

inhumanity, unsrupulousness and gradual extinguishing of a human life, the torturing of victims by using fire and water, later, the massacring of the body by "the meat grinder", so that there are no traces which prove that the offence was committed. Most often they take photos of their victims and then they forward them to other members of their group, boasting and proving their supremacy.

We also have the example of the statement of an associate witness who gave his statement at the main trial, and this information was published on the Internet portal of Informer, (2022), "the injured party was also taken to the house where the defendant, after several hours of torture, cut off his head with an ax. After that, he was minced and thrown into the Danube."

The offence of first – degree murder in a cruel manner is one of the offences which is so characteristic of the organized crime, and it is committed by the organized criminal groups. The organized criminal groups are guided by the motto: "No body, no crime."

"The activities of the organized crime become more developed every day, both in terms of scope and content. In addition, they are characterized by the increasing unscrupulousness, recklessness and violence of the criminals. This refers to all the forms of the organized criminal activities. The consequences of the organized crime are more destructive towards the values and the interests of the individuals, society, state, and international community. Besides operating in wider geographical areas more often, the criminal organizations do not limit their scope to certain "jobs". The organized crime is infiltred in almost all spheres of social and state life, so "the development of new crime business is realistically expected." (Mijalković, Subošić & Bošković, 2011, p. 144).

3. Practical examples

There are some practical examples where it is said that "the victim was killed in a cruel way when the two defendants overpowered her at the same time and beat her on the vital parts of her body during and after the rape. In order for them to satisfy their sexual urge, they tried to have sex with her, by took turns, and then both of them would continue to beat her on the vital parts of her body, which means that they hit her in the area of her neck below her chin and on her thorax, and on her head, as long as she gave the signs of life. From this we can clearly see that both defendants were aware that, by hitting the deceased woman on the vital parts of her body, they could take her life, as they wanted, because they hit her as long as she showed the signs of life.

As they held the hand over her mouth, which means that the first defendant suffocated her by constantly holding his hand over her mouth, and then by beating, according to the opinion of the expert, the deceased woman suffered great pain and fear of extreme intensity which lasted for at least 20 minutes. All of that indicates that the defendants deprived the deceased woman of her life in a cruel manner" (the judgement of the Supreme Court of Serbia Cr. case. 1442/99 of 17th April, 2001, Court Practice, Belgrade, no. 9/200, p. 16).

"The cruelty of the committed offence must have its objective side, which is reflected in the infliction of unnecessary suffering on the victim that exceeds the suffering that usually accompanies any deprivation of life, and its subjective component, which is reflected in the defendant's awareness of torturing the victim and in his willingness to do so and therefore he acts in that way. The Supreme Court correctly found that the objective side of the cruelty of the execution of this offence is reflected in the infliction of unnecessary suffering on the victim that goes beyond the suffering that usually accompanies any murder, in addition to 20 stab wounds in the front part of the neck, thorax and abdomen, the defendant previously inflicted 37 shallow stab wounds which were 5 cm deep, in the front part of the neck, in the lower part of the thornax on the front side, on the front part of the abdomen, to the deceased woman, where the above-mentioned injuries were inflicted on her on several occasions when she felt pain and fear for her life and defending herself in an attempt to save herself, the injured party also received three grazes on her hands by grabbing the knife with which she was attacked by her bare hands, where, during the whole time of defending herself, she felt the maximum fear to the level of horror, because of the feeling of being threatened for her life, where by receiving each subsequent injury, until she lost consciousness, she felt even greater pain which increased the feeling of fear and threat for her own life, where the injured party felt the pain, suffering and fear for her own life for a long period of time, for the entire duration of the event which lasted almost the entire afternoon from the early hours in the morning" (the judgment of the Court of Appeal in Belgrade, Cr. Case 351/2012 of 19th April, 2012, the Bulletin of Higher Court in Belgrade, Belgrade, number 83/2013, pp. 14-15).

"Higher Court in Belgrade announced a verdict by which the defendant was found guilty because, during the night, he deliberately tried to take life of his wife in a cruel manner, in which process he was aware of the illegality of his act and wanted to carry it out, in such a way that, after an argument and physical attack on the injured party, she left the flat in which she lived with him, and went to the flat in which her children lived, with the intention of

escaping and avoiding the further confrontation with him, and during that time the defendant went to to the nearby gas station where he bought gasoline in a large bottle of water, in the amount of 5,750 liters, he came to the flat where his wife was, he entered the building in such a way that a neighbour who was returning from a walk opened the front door for him, after that he went to the flat in which the injured party was, he rang the bell, then he banged on the door and because of that the injured party opened the door, and after a short discussion he poured the gasoline from the bottle on her with the statement: "I will go to prison, and you will burn in hell!", after which he lit the gasoline with a lighter, which he poured on the injured party, as a result of which the flame engulfed the injured party's body who in that way received severe, life-threatening bodily injuries, in the form of physical (thermal) injuries – burns of a mixed type, mostly of deep IIb and III degree, namely of the hairy part of the head, face, the left half of the neck, the front part of the thornax, neck, shoulders, and both arms (except for her hands), on the shoulders and upper arms, spread over about 45% of the surface of the body, as a result of which she suffered the pain of the highest intensity, in the range of unbearable, with the fact that the death of the injured party was prevented by the help of a neighbour who extinguished the fire from her body, while the defendant escaped from the scene using the commotion. By which he committed the offence of first – degree murder in an attempt. From Art. 114. Par. 1. Point 1 of the CC concerning the art. 30 of the CC" (the verdict, Higher Court in Belgrade, the Republic of Serbia, Cr. case 61/15).

"Higher Court in Belgrade announced a verdict by which the defendant was found guilty because, in the state of being sane and aware of his act and its illegality, the execution of which he wanted, according to the previous agreement and plan with his lover, and in order for them to continue their emotional relationship unhindered, he deprived her husband of his life in a cruel and treacherous manner in such a way that he, knowing that he was sleeping, and according to the previous plan and agreement, together with her he came to the front door, entered the flat with her, during which they entered the room where the injured party was sleeping, and near him there was his minor son, and his lover put the scarf over the injured party's mouth, then a pillow, when the injured party woke up he tried to defend himself, but the defendant pressed the injured party with his arms and leg, so that he could not move, after which the defendant stabbed him with the handle of a knife that he had previously taken out of his pocket and unfolded it, hit him on the head, after which, together with his lover, he made 33 injuries in total, out of which 24 were stab wounds with a knife, of which the defendant personally inflicted

at least four stab wounds, of which, one in the area of the neck and three in the area of torso, aware that the injured party suffered the pain and suffering of high intensity, during which each of these stab wounds represented a serious and life-threatening bodily injury, which together with other injuries due to bleeding caused the death of the injured party, and then, in order for him to cover up the committed crime, he staged a break-in in the family's flat, in such a way that the defendant broke down the front door from the outside with the strength of his body, and then left the country in a passenger vehicle. In this way, he committed the offence of first – degree murder in complicity from Art. 114, point 1 of the CC concerning the art. 33 of the CC." (the verdict, Higher Court in Belgrade, the Republic of Serbia, Cr. case 12/17).

4. Conclusion

Bearing in mind that the right to life is a universal human right, its protection is carried out both at the national and international level. The right to life is an elementary right, and the society has an interest to protect the lives of its citizens, in which process that protection is achieved independently of the will of the individual. First – degree murder in a cruel manner is one of the most serious offences, which is aimed at endangering the life and body of an individual. Primarily because of its cruelty, callousness, insensitivity towards the pain and suffering of the victim and their great desire for the victim to feel all the anger and depravity hidden in the perpetrator of this offence. In the paper we were able to see what the qualifying circumstances that were characteristic of the offence were. Since premeditation is necessary in terms of guilt, we have seen from the examples that even the insane people are not excluded from the punishment for the commission of this offence. We drew a parallel between the ordinary murder and first – degree (qualifying) murder, and named some practical examples. We have also mentioned how much this offence is represented in the organized crime and how the organized criminal groups carry out these offences, which can be extremely monstruous and logically not understandanble, to an ordinary, normal person. On the part of the law, for this criminal offence which belongs to the group of the Offences against life and body, there are the adequate punishments which accompany its execution, considering the fact that the threatened punishment is one of the most severe ones, which includes life imprisonment, too, and there is no possibility of mitigating the punishment, and with each murder, the society loses one member of its community.

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TEŠKO UBISTVO NA SVIREP NAČIN

REZIME: Teško ubistvo spada u red najtežih krivičnih dela za koja su zaprećene najteže kazne. U svojoj osnovi, teška ubistva imaju sva obeležja koja su zajednička za svako ubistvo, tj. protivpravno lišenje života drugog lica, ali je ubistvo praćeno nekom posebnom, kvalifikatornom okolnošću koja ga čine težim i društveno opasnijim od običnog ubistva. U ovom radu ćemo se osvrnuti i pobliže objasniti teško ubistvo na svirep način, koje je kompleksno krivično delo gde svirepost s jedne strane podrazumeva lišenje života žrtve na način da joj se stvaraju preterani bolovi i patnje, dok je, s druge strane, neophodno da učinilac pokaže i jedan poseban emotivni odnos prema tim bolovima i patnjama (u vidu zadovoljstva, uživanja u njima, odsustvu sažaljenja i sl.). Osvrnućemo se na tezu da li krivično delo teškog ubistva izvršenog na svirep način može biti planirano, da li se za pokušaj kažnjava. Napravićemo paralelu između krivičnog dela ubistva i krivičnog dela teškog ubistva, i da li je ovo krivično delo izvršeno na savestan ili nesavestan način. Takođe ćemo se osvrnuti i na organizovani kriminal i koliko je često izvršenje ovakvog krivičnog dela u kriminalnim grupama. Cilj istraživanja je da se upoznamo sa značenjem i kvalifikatornim okolnostima koje su karakteristične za ovo krivično delo, te da vidimo kako se u praksi ovo krivično delo kvalifikuje, koje su sankcije, i kako to sud u postupku ceni određene nalaze i mišljenja, te šta su otežavajuće okolnosti koje su merodavne za određivanje visine kazne.

***Ključne reči**: krivično delo teško ubistvo, svirepost, ubistvo, organizovani kriminal, zakon.*

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REGISTAR

sadržaja časopisa za 2022. godinu

The Register of Journal Contents for the Year 2022

OBJAŠNJENJE: Prvi broj se odnosi na broj časopisa, drugi broj označava stranu u časopisu, dok treći broj označava godinu izdanja.
EXPLANATION: The first number refers to the issue number, the second number indicates the page in that issue of the journal, while the third number stands for the year of publication.

Priredio/
Arranged and prepared for publishing by:
Prof. Nenad Stefanović, Ph.D.

THE INSTRUCTION TO THE AUTHORS
FOR WRITING AND PREPARING MANUSCRIPTS

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

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

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

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

General information about writing the manuscript:

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

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

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

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

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

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

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

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

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

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

Citing rules inside the manuscript

If the cited source has been written by one author:

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

There is an example:

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

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

There is an example:

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

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

There is an example:

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

If the cited source has been written by two authors:

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

There are some examples:

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

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

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

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

There is an example:

(Cvijanović, Matijašević Obradović & Škorić, 2017)

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

There is an example:

(Cvijanović et al., 2017)

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

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

There is an example:

(Savić et al., 2010)

If the author of the cited text is an organization:

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

There is an example:

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

further citations: (SASA, 2014)

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

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

There is an example:

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

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

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

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

If there exist two or more texts in one citation:

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

There is an example:

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

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

There is an example:

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

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

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

There is an example:

Published in *Politika* (2012)

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

If the personal correspondence is cited:

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

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

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

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

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

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

A note:

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

There is an example of a reference in a footnote:

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

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

If the laws and other regulations are cited:

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

There is an example:

(The Code of criminal procedure, 2011)

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

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

There is an example:

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

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

There is an example:

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

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

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

There is an example:

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

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

There is an example:

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

An important note:

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

The example:

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

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

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

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

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

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

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

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

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

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

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

References:

1. Agencija za privredne registre. *Privredna društva* [*Companies*]. Downloaded 2020, January 10 from https://www.apr.gov.rs/o-agenciji.1902.html
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