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S A D R Ž A J

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DOMESTIC VIOLENCE– THE POSITION OF THE CHILD IN VIOLENCE SUFFERED BY THE PARENT AS A VICTIM

ABSTRACT: Domestic violence, regardless of how it is manifested, represents a phenomenon which has recently attracted more and more significant doctrinal and media attention and it is a very complex problem. There are numerous questions about domestic violence to which this paper tried to provide answers. However, it is important to point out that domestic violence is not the only type of violence to which a child can be exposed, or to which he/she can be connected in an indirect or direct way. Bearing in mind that one form of violence predominantly causes and entails the other forms of violence to which a child can be exposed, and even find him/herself in the capacity of being a bully, the authors of the paper considered it important to briefly mention the other forms of violence in which the center of attention can be the child, such as digital violence and violence in schools. The focus of the paper has certainly concerned the position of the child in situations where violence against one of the parents (mostly against the mother) by the other parent (mostly the father) occurs. The conclusion is that the direct or

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indirect child's presence and/or his/her knowledge of the violence suffered by the mother is actually an extremely negative pattern of behavior being adopted by the majority of children during their development.

***Keywords**: domestic violence, child, victim, abuser, the Family Law, the Law on prevention of domestic violence.*

1. Introduction

Violence in the family with its various manifestations and forms is attracting the attention of the scientific and professional public, especially in the last few decades. The consequences it causes do not only affect the individual and his personal development, but have multiple negative implications for the narrow and wider social environment and society as a whole. Most often, women and children are victims of domestic violence, and the world takes extensive measures and a multidisciplinary approach to prevent domestic violence and minimize its consequences (Merdović & Bjelajac, 2021). Domestic violence, regardless of how it manifests itself (whether as violence in partner relationships, marital or extramarital violence, violence against children, violence against parents, etc.), is a phenomenon that in recent years has attracted increasingly significant doctrinal and media attention.Who are the victims of domestic violence, and who are the perpetrators? What are the characteristics of domestic violence, and what forms of violence can we distinguish? Then, what is the relationship of the victim to the abuser, and what is the relationship of the abuser to the victim? Also, whether they are and to what extent are the other family members involved in the violent relationship of one of the family members towards the victim – a family member? These are just some of the important questions that arise when considering the topic of domestic violence.

According to Article 3, paragraph 3 of the Law on the Prevention of Domestic Violence (2016), domestic violence is "an act of physical, sexual, psychological or economic violence by the perpetrator towards a person with whom the perpetrator is in a current or previous marital or extramarital or partnership relationship or towards to a person with whom he is related by blood in the direct line, and in the collateral line up to the second degree or with whom he is related by in-laws up to the second degree or to whom he is an adoptive parent, adoptee, foster parent or foster parent or to another person with whom he lives or has lived in a joint household".

Article 197 of the Family Law (2005) defines domestic violence as "behavior by which one family member endangers the physical integrity,

mental health or tranquility of another family member." The following are considered to be domestic violence in particular: causing or attempting to cause bodily harm; causing fear by threatening to kill or cause bodily harm to a family member or a person close to him; coercion into sexual intercourse; inducing sexual intercourse or sexual intercourse with a person who has not reached the age of 14 or a disabled person; restriction of freedom of movement or communication with third parties; insulting, as well as any other insolent, reckless and malicious behavior". Family members in the sense of the same law are considered to be: "spouses or ex-spouses; children, parents and other blood relatives, and persons in in-law or adoptive relatives, that is, persons bound by foster care; persons who live or have lived in the same family household; common-law partners or former common-law partners; persons who were or are still in an emotional or sexual relationship with each other, i.e. who have a child together or a child is about to be born, although they have never lived in the same family household".

According to Petrušić and Konstantinović Vilić (2010), contemporary theory and practice know "multiple types of domestic violence, namely: violence in marriage, violence against members of the joint household and violence against children" (p. 9). In this part, Krstinić and Vasiljković (2019) state that "every type of this violence manifests itself by injuring and endangering the domain of safety and trust, and is characterized by power and control over the victim" (p. 68). Bearing in mind that the family represents the foundation of the growth and development of society and that it is within the family that the proper development of the individual is enabled, primarily in the social, emotional, psycho-physical format, "and that, as a rule, for most of his life, from birth to death, man spends within the family, unfortunately, understanding and mutual respect are not present in every family, so there are often disturbed relationships within it" (Bošković, 2009, p. 93).

2. Relationships between the victim, the abuser and other family members in domestic violence

Very often, the public asks who are the victims of domestic violence and who are the perpetrators, what are the characteristics of domestic violence, what are their mutual relationships and whether and to what extent other family members are involved in the violent relationship of one of the family members towards to the victim – a family member. According to Matijašević Obradović and Stefanović (2017), "violence in the family is disclosed, that is, reported much less often than the actual representation in practice. Patriarchal

understandings of family relationships, fear of revenge from the abuser or other family members, fear of the opinion (condemnation) of the environment or friends, or reasons of an existential nature, are some of the reasons why victims rarely report this form of violence" (p. 15).

Violence in the family as a phenomenon at first glance "is very clear, specific, extremely obvious and recognizable. However, one must not lose sight of the fact that phenomena, at first glance simple, are in reality very complex. Accordingly, domestic violence is a far more complex phenomenon. There is no unified view of the range of behaviors that are considered violent" (Matijašević Obradović & Stefanović, 2017, p. 15). According to research conducted in previous years in the field of domestic violence, certain conclusions were reached precisely in the sphere – who is the victim, who is the perpetrator, what are their relationships and how these relationships reflect on other family members. The goal of analyzing the data of these researches is to come to a review of the role of children and their position when perpetrating violence in the family by the parent of the abuser, and towards the parent who is the victim.

Namely, according to the results of the research "on domestic violence that was conducted in 9 departments for social work, out of 949 registered users, female persons are represented as direct victims of domestic violence in 73.5% of cases." Victims of violence are of all age categories. Minor victims of violence make up a third of the sample, or 37.7% of all cases, while the remaining victims of domestic violence are adults. Almost half of the registered victims of violence – 45.6% are middle-aged, between 26 and 45 years old. When the gender of the victim of violence is observed in relation to the age structure of the beneficiaries, in adulthood, in all age categories up to 55 years, women make up the majority. While with minor victims of different sexes, the situation is reversed – 57.5% are boys and 42.5% are girls" (Ignjatović, 2004, pp. 19-20).

According to the same research, "persons who commit violence against family members, according to records from the department of social work centers, in the vast majority – 82.6% are male, which is in accordance with all previous statistics and research data." Males make up two-thirds of the perpetrators of violence against minor victims (63.7%), while women represent a third of the perpetrators (36.3%). In relation to adult victims of violence, 556 men were identified as perpetrators, and only 35 women were perpetrators of violence, 10 of them according to persons in the oldest category (Ignjatović, 2004, pp. 20-21).

If the relationships between victims and abusers are analyzed, "more than half of all cases of violence (53.1%) originate from partners – current and ex-husbands." Parents are the perpetrators of a third of all identified cases – 35.1%.

Simultaneously with violence against female partners, in almost half of the cases of domestic violence, children are also victims (419), and when the violence is directed towards children, in slightly less than half of the situations, female partners are also victims of violence (409)" (Ignjatović, 2004, p. 21).

Ignjatović points out that "thugs also behave violently towards other relatives – their own (98) and their partner's parents (86 cases), but also towards other relatives who live in the same household or help solve problems within the family (72), even towards to other close people – non-relatives (34). Threats, as well as exposure to immediate violence, distance close people, due to feelings of fear or powerlessness, from the family where violence occurs, leaving the victim isolated from the help of close relatives and friends, which contributes to the sense of power and control that the abuser has" (Ignjatović, 2004, p. 21).

By analyzing the previously presented numerical data and the previous conclusions of the authors of this paper regarding the relationship between the victim – the abuser – other family members, the following can be said.

There are several ways in which victims react to the violence they suffer from their family members. Very often there is a search for justification for the abuser, which often leads to the denial that the violence happened at all. The most numerous group of victims are those who do not oppose the violent behavior, hoping that things will improve by themselves and that the abuser will change his behavior if he sees that the victim does not oppose. There is again a group of victims who show more or less open hostility towards the abuser, not agreeing to compromises in their further relationship and behavior. Establishing healthy boundaries in the relationship with the abuser and other family members is not a common case, especially in situations of enduring long-term violence.

Bullies, on the other hand, can show signs of remorse for what they have done, seeking justification for themselves while working to improve family relations. However, this is not so often the case in practice. Some of the abusers refuse to cooperate with the relevant institutions, ignoring calls and cooperation, especially with the center for social work. The largest group of abusers denies the propensity for violence and committing violent activities, criticizing the family member who is the victim. As Ljubičić (2020) states in his research, "several possible variants of the involvement of other family members in a violent relationship were identified. Family members can be completely excluded from the abusive relationship. That would be a situation in which, when it happens, they do not get involved in the violence, maybe they don't even know about it, nor do they participate in the evaluation process before the centers for social work. There are also those who occasionally get involved when violence occurs, or intervene after a violent episode.

Intensively involved family members in violent episodes participate either on the side of the victim: by defending her or hiding together with her from the abuser, or on the side of the abuser, protecting him and/or inciting him to violence" (p. 167).

What has been said leads to the conclusion that the family is a suitable ground for the manifestation of aggression and violent activities. As Račić (2021) states, "the family is a closed, intimate, gender-traditional environment. An environment in which personal and developmental needs are most openly placed, a place of numerous frustrations, a place that is most suitable for relieving tension and tension, whether it is within the family or outside the family, a place where earning and in the name of belonging and love count on boundless suffering and forgiveness" (pp. 271-272). In this whole situation, children "can be direct and indirect victims of violence." Namely, a child can be directly exposed to physical, psychological and sexual violence, while indirectly when he witnesses violence against another family member. Often, indirect violence quickly turns into direct" (Račić, 2021, p. 272).

3. Family – parents – child

The family is usually defined, "as the basic social cell and as one of the most complex, oldest and earliest social groups. A family is a universal community consisting of adults, reproductively capable partners and their offspring" (Počuča, 2010, p. 49).

According to Article 2 of the Family Law (2005), "the family enjoys special protection from the state, and everyone has the right to respect for their family life."

According to Mladenović and Panov (2003), "the family can also be defined as a circle of persons bound by marriage (or extramarital union) and kinship, between whom there are legally established rights and duties, the non-compliance of which entails certain sanctions" (p. 44).

The family has its primary functions that make it a category as defined above. Namely, "biological and educational functions are the basic functions of the family, which have not changed since its foundation until today. The biological fiction of the family is reflected in the satisfaction of the individual's sexual drive, the birth of a new generation and the extension of the human species. The educational function of the family is to raise new generations into acceptable and reliable members of the social community. The social function of the family is also not without importance, which is the care and protection of family members" (Počuča, 2010, p. 50).

It is very important to point out that "the protection of individuals within the family is certainly a very important task of the family. The family is a refuge, where an individual finds security and peace. The family protects the individual from external violence, physical and psychological. The family also has an economic function, because it earns money, distributes the earned money and spends it to satisfy family and personal needs" (Počuča, 2010, p. 50). Certainly, external influences on the family are of great importance. In this context, Počuča (2014) states that "looking at the family as a primary sociological category, it is evident that social crises (social, economic, political, etc.) significantly affect relationships and processes within this community in a fundamental sense" (p. 31). However, what characterizes a stable and emotionally stable family is the absence of any activities that would disrupt the economic, emotional, social, educational, and biological function of the family. Parenting is the most important role for both parents. According to Hodžić (2021), "parenthood implies the care of a mother, father or some other person for a child. Parenting requires commitment to the child. Children need support from both sides, and if it is absent later, there may be problems with concentration, integration into society and the development of unacceptable and harmful emotional patterns and forms of behavior in children" (p. 13). According to Article 7 of the Family Law (2005), "parental rights belong to the mother and the father together." Parents are equal in exercising parental rights". In the context of what has been said, childhood can be defined as "the period of life during which a human being is considered a child, and when considering that period, its cultural, social and economic characteristics are necessarily included" (Frenes, 2004, p. 113; Jerončić, 2015, p. 13). Everyone is obliged to be guided by the best interest of the child in all activities concerning the child. Article 6 of the Family Law (2005) stipulates that "the state has the obligation to take all necessary measures to protect the child from neglect, from physical, sexual and emotional abuse and from any type of exploitation." Also, the state has an obligation to respect, protect and promote the rights of the child". The same article stipulates that "a child born out of wedlock has the same rights as a child born in wedlock, as well as that an adopted child has the same rights towards adoptive parents as a child towards parents". The last paragraph of the mentioned article stipulates that "the state is obliged to provide protection to a child without parental care in the family environment whenever possible."

As can be concluded from the above, "there is no universal definition of the term child. The reason for this lies in the fact that the child, his origin, development and his position are directly related to the socio-political system

in which he is born and lives. In the past, it was stated in professional literature that a child is a human being born from partner relationships. Today, in the modern world, this circumstance has also changed significantly, because a child is no longer just a product of partner relationships. Today, a child can be born from a surrogate union or through in vitro fertilization" (Račić, 2021, p. 269). Račić (2021) still points out the conceptual definition according to which a child is "a living being who, by his birth, acquires the inalienable right to life, the right to opinion, to speech and to all other civil rights established by the Declaration on Human and Civil Rights from 1954" (p. 270).

If we consider the matter of violence against children, or violence in which children are conscious or unconscious participants, or witnesses or are indirectly or directly connected to some act of physical, verbal, psychological or other form of violence, it can be said that there are numerous varieties of forms of violence, but also the roles that a child or minor can play in that context. This will be discussed more in the next two subheadings.

4. Forms of violence to which children are exposed or connected in an indirect or direct way

According to Petrušić and Konstantinović Vilić (2010), domestic violence is one of the "most serious forms of violence, because its manifestation violates the basic human rights and freedoms of family members, such as the right to life, the right to freedom and security, physical, sexual and psychologically integrity and dignity" (p. 8). As already mentioned, domestic violence is a complex problem, conditioned by the "joint action of psychological, socio-economic, social, cultural and other factors" (Opsenica Kostić, Todorović & Janković, 2016, p. 133).

It is important to point out that domestic violence is not the only type of violence to which a child may be exposed, or to which he may be connected in an indirect or direct way (Matijašević & Dragojlović, 2022, p. 99).

As Račić (2021) points out, "violence against children is not a constant category. The environment, manner and mechanisms of the nation change along with the development of society, having its wider and more deviant forms. When we talk about the environment in which violence against children is perpetrated, we distinguish between violence within the family and violence outside the family, which can be within educational institutions and outside them, as well as violence on social networks" (p. 270).

Proceeding from what has been said, the following forms of violence to which a child may be exposed, or to which he may be connected in an indirect or

direct way, can be distinguished: family violence, digital violence and violence in schools (violence in educational institutions is distinguished as a subcategory).

Digital violence is "violence created by the development of technique, technology and the development of social networks and represents every form of violence that arises from the use of digital technologies." Its primary goal is to publicly intimidate, expose to public ridicule or cause anger and resentment in the victim of violence. Depending on the use of the platform, we distinguish digital violence through social communication networks, mobile phones, gaming platforms, etc. Digital violence against children is mostly represented among peers" (Račić, 2021, p. 273).

Violence in schools and in general in educational institutions certainly deserves more attention in society, but also in scientific reviews. According to the findings of one of the most detailed studies on school violence, which was carried out as part of the "School without violence – towards a safe and stimulating environment for children" project a few years ago, "44% of students were exposed to violence in the three-month period that preceded the research. Among those who were exposed to violence, 45.8% experienced verbal violence, 33% physical violence, and the same amount of social violence, that is, relational violence, while 21% of children committed violence. Boys are more likely to be perpetrators of bullying than girls and are more often exposed to peer and adult violence" (SeConS & Unicef, 2023, p. 13).

In addition to the above, "a quarter of students attending from the fifth to the eighth grade of elementary school stated that they were exposed to teacher insults, 15% stated that the teacher hit them, and 5% said that they were exposed to teacher threats/ ca. However, the research showed that student violence towards teaching staff is also widespread – 43% of students stated that they witnessed situations in which another student insulted or threatened the teacher, while 9% stated that witnessed physical attacks on teachers" (SeConS & Unicef, 2023, p. 14).

According to the same research, "violence among peers is somewhat more common in special schools, where 58% of children were involved in incidents of violence (28% as victims, 7% as bullies and 23% as both victims and bullies)" (SeConS & UNICEF, 2023, p. 114). As can be seen, a child can be exposed to different types of violence, and can also be found in different roles in such situations. What is certainly interesting to analyze is the position of the child in situations where violence is committed against one of the parents by the other parent. In those situations, the child can be seen as a secondary victim of an act of violence, and he is certainly a participant whose presence entails significant repercussions (Bjelajac & Merdović, 2019).

Children can be hurt in many ways. They can be physically or psychologically abused, sexually assaulted, mistreated and neglected. A large part of violent acts against children are committed by adults from the children's immediate environment - sometimes even by their legal representatives (Bjelajac & Matijašević, 2013).

5. The position of the child in situations where violence against one of the parents by the other parent occurs

According to Petrušić and Konstantinović Vilić (2010), "the procedure for protection against domestic violence is most often conducted in order to provide legal protection to persons of the female gender. Out of a total of 287 lawsuits included in the research, 253 were conducted on the occasion of violence committed against a female family member, which accounts for 88.2% of the total number of lawsuits" (p. 41). From the conducted research, it can be concluded that in the majority of cases of domestic violence, the victim is actually a woman.

Research shows "that more than 80% of children who witness violence against their mothers, the term "violence witness" is vaguely defined because it can include the presence of children in the situation of violence, but not necessarily, because the child can hear (from another room), to see the consequences (hurts or feelings of the mother), but may also be forced to watch or commit violence against the mother, listened to or used to "spy" on the mother, may be exposed to accusations that the mother is guilty of violence or the arrest of the father, witnessing the arrival of the police or emergency medical services, participating in assessments and court processes or witnessing a suicide attempt or the murder of a mother" (Ignjatović, 2020, p. 308).

Furthermore, the researches came to the general conclusion that "in more than two thirds of cases, children witnessed violence committed by their father towards his wife – their mother – in the past and in the last 12 months." A very small number of these children were present at one violent event – that is, in almost 95% of cases, the children were present more than once at the father's violence against their mother" (Ignjatović, 2015, p. 71).

Numerical data on the position of children in domestic violence, in situations where the violence is directed towards the child's mother, and by the spouse – the child's father, are shown in the following table.

Table 1. The position of the child in the violence suffered by the mother – the victim parent

	Ever before		**In the last 12 months**		**One time**		**Multiple times**	
Number and percentage cases	N	%	N	%	N	%	N	%
Children attended violence	130	76,5	124	72,9	7	5,4	123	94,6
Violence present towards the children	78	45,9	63	37,1	13	16,7	65	83,3

Source: Ignjatović, 2015, p. 71.

According to the research, "a long list of different experiences of children follows this data." The mothers state that the children saw various forms of physical and psychological violence against them, that the fathers generally did not care whether the children were present or not, that the children were sometimes in the next room and could hear everything, or could they see the immediate consequences of violence. Very young children were sometimes in the hands of their mothers, some children were forced by the father to watch, and others were punished. Only in individual, rare cases did the abuser beat the woman when they were alone, and he sometimes introduced this type of control after reporting the violence to one of the institutions" (Ignjatović, 2015, p. 71). Furthermore, "mothers think that the children knew, felt or saw the consequences of the violence that their partner did to them even when they did not (directly) witness the violence, in almost two fifths of cases (38.8%). The expression on the mother's face (crying, sad, silent, humiliated, upset), or the injuries, told the children who did not witness the violence that something was wrong in the relationship between the parents" (Ignjatović, 2015, p. 72).

Research has also shown that "children's reactions to the violence suffered by their mothers, to which they themselves were exposed in a large percentage, were different and certainly depended on the age of the children. Younger children have fewer resources to stand up to fathers or protect mothers. Some of them showed fear and dismay at their father's behavior, turned away and remained silent, while others showed initiative, called for help or asked their mother to report or leave their father. Although the physical or verbal involvement of children, in order to protect the mother from violence or to stop the father from doing it, represents a great risk that the child himself will be injured, this was the most frequent reaction of children, present in more than two fifths of cases" (Ignjatović, 2015, p. 73).

What has been said certainly indicates that the direct or indirect presence and/or knowledge of the child's violence suffered by the mother is actually an

extremely negative pattern of behavior that the majority of children themselves adopt during development.

Children's reaction to violence against their mothers is numerically and percentageally shown in the following table.

Table 2. Children's reactions to violence to which their mother – a victim of violence – was exposed

How did the children react?	N	%
Physically or verbally they got involved	73	42,9
They ran away, took cover	67	39,4
They called for help	42	24,7
They asked the mother to leave the fathe	42	24,7
They asked the mother to report the father	24	14,1

Source: Ignjatović, 2015, p. 74.

The research led to another conclusion. Namely, "in some cases, children asked their mothers to withdraw the report of violence against their father, fearing that he would lose his job or go to prison, or they begged their mothers to return to the abusive husband they had left." Rarely, the children joined the father in blaming the mother for the violence" (Ignjatović, 2015, p. 75).

6. Conclusion

Domestic violence, regardless of how it manifests itself, is a phenomenon that has attracted increasingly significant doctrinal and media attention in recent years and is a very complex problem..

Some of the significant questions that arise when considering the subject of domestic violence, and which are definitely analyzed in the paper, are: Who are the victims of domestic violence, and who are the perpetrators (violators)? What are the characteristics of domestic violence? Then, what is the relationship of the victim to the abuser, and what is the relationship of the abuser to the victim? Also, whether and to what extent other family members are involved in the violent relationship of one of the family members towards the victim – a family member?

It is important to point out that domestic violence is not the only type of violence to which a child may be exposed, or to which he may be connected in an indirect or direct way. Bearing in mind that one form of violence predominantly causes and entails other forms of violence to which the child can be exposed, and even find himself in the capacity of the bully himself, the authors of the paper

considered it important to briefly mention other forms of violence in which a child can be found in the center. Thus, starting from what has been said, the following forms of violence to which a child may be exposed, or to which he may be connected in an indirect or direct way, can be distinguished: family violence, digital violence and violence in schools. Each of the mentioned forms is analyzed in the paper.

The focus of the work certainly concerned the position of the child in situations where violence against one of the parents (most often the mother) by the other parent (most often the father) occurs. The research part of the work concerns this very topic, and as a conclusion, the statement that the numerical and percentage data indicate that the direct or indirect presence and/or knowledge of the child's violence suffered by the mother is actually an extremely negative pattern of behavior that in the largest percentage of the children themselves adopted during development. That is why full attention of the scientific and professional public is necessary precisely in the segment of preventing domestic violence, but also working with children in situations where domestic violence has already occurred.

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NASILJE U PORODICI – POZICIJA DETETA U NASILJU KOJE TRPI RODITELJ ŽRTVA

REZIME: Nasilje u porodici, bez obzira na koji način da se manifestuje pojava je koja poslednjih godina skreće na sebe sve značajniju doktrinarnu i medijsku pažnju i veoma je složen problem. Brojna su pitanja o nasilju u porodici na koja je rad pokušao da pruži odgovore. Međutim, bitno je istaći

da nasilje u porodici nije jedini vid nasilja kom dete može biti izloženo, ili sa kojim može biti povezano na posredan ili neposredan način. Imajući u vidu da jedan oblik nasilja pretežno uzrokuje i povlači za sobom i druge oblike nasilja kojima dete može biti izloženo, pa čak se i naći u svojstvu samog nasilnika, autori rada su smatrali da je bitno u kraćim crtama pomenuti i druge oblike nasilja u čijem središtu se može naći dete, kao što je digitalno nasilje i nasilje u školama. Težište rada svakako se ticalo pozicije deteta u situacijama kada se dešava nasilje prema jednom od roditelja (najčešće majci) od strane drugog roditelja (nejčešće oca). Zaključak je da je neposredno ili posredno prisustvo i/ili saznanje deteta o nasilju koje trpi majka zapravo izrazito negativan obrazac ponašanja koji u najvećem procentu deca i sama usvajaju tokom razvoja.

***Ključne reči**: nasilje u porodici, dete, žrtva, nasilnik, Porodični zakon, Zakon o sprečavanju nasilja u porodici.*

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CRIMINAL PROFILERS – HUMAN LIE DETECTORS

ABSTRACT: For a long time, people have demonstrated a natural tendency to analyze and assess fellow humans as well as animals, objects, and similar entities, even in everyday scenarios. However, it is a little bit strange that criminal profiling became integrated into standard investigative practices within law enforcement not before the 1980s. Criminal profilers primarily fulfill their role by working on the resolution of intricate crimes where the identity of the perpetrator is unknown. On the other hand, they also have a suppressive impact, and to a lesser degree, a preventive influence, which is enhanced by considering the risk factors associated with the emergence of criminal behavior, as well as the study of criminal phenomenology. The techniques employed in criminal profiling aid in the timely identification of symptoms that indicate a combination of biological, social, and environmental factors, including learning and situational elements. As we navigate through the factors contributing to the development of criminal behavior, as well as the suppression and prevention of crime through the efforts of criminal profilers, we reach the significance of their role in detecting deception and the essentiality of human presence and intervention in diverse formal conversations,

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encompassing law enforcement, social work, and education. The aim of this paper is to systematically shed light on the factors contributing to the development of criminal behavior, to investigate the phenomenology of crime and to highlight the role of criminal profilers in the prevention and suppression of crime, as well as to analyze their role in the process of lie detection, while giving recommendations for the incorporation of profiling techniques into the body of knowledge and skills of teachers, pedagogues, psychologists, social workers, and others. The methods used in this study include a quantitative and qualitative analysis, using primary and secondary sources, as well as a comparative analysis.

Keywords*: criminal profiling, development of criminal behavior, risk factors, lie detection, crime prevention.*

1. Introduction

Although criminal profiling emerged as a formal practice in criminal investigations relatively recently, its underlying elements and processes have been unconsciously utilized by people since ancient times in various aspects of everyday life. Individuals tend to profile others during initial encounters, even before establishing potential emotional relationships, when assessing prospective employees during the hiring process, and even in casual encounters on the street, in supermarkets, shopping centers, or while navigating through traffic. Criminal profiling, therefore, represents a logical extension, systematization, and application of these innate processes. By employing criminal profiling in the detection and prevention of criminal acts, it becomes crucial to establish the connection between criminal profiling and the understanding of the origins of criminal behavior and the development of risk factors.Criminal behavior is a complex phenomenon that has been researched extensively in the fields of psychology and criminology. While the origins of criminal behavior are not fully understood, many theories have been proposed to explain its development. Developmental risk factor theories play an important role in criminal behavior research, and we can sublimate the results of various research and consequential theories into several groups – biological risk factors, social risk factors, and learning risk factors and situational factors.In addition to studies of the origin of criminal behavior, it is important to mention studies of criminal phenomenology, which representsthe study of the subjective experiences of individuals who engage in criminal behavior. Some researchers suggest that criminal behavior is a response to

feelings of powerlessness, social exclusion, and frustration (Braithwaite, 1989). Others suggest that criminal behavior is a way for individuals to assert their independence and autonomy (Katz, 1988). Still, others suggest that criminal behavior is a product of an individual's social and cultural context (Matza, 1964). Based on the comprehensive information presented thus far, it is evident that the origin of criminal behavior is an exceedingly intricate phenomenon encompassing diverse manifestations. The goal of this paper is to systematically elucidate the factors contributing to the development of criminal behavior, explore criminal phenomenology, and highlight the role of criminal profilers in prevention and intervention. The ultimate aim is to reduce crime rates and foster a culture of public safety. Additionally, the techniques employed by criminal profilers can be adapted for application in other domains of human activity, such as education or pedagogy. The research methods employed in this study encompass both quantitative and qualitative analysis, drawing on primary and secondary sources, as well as comparative analysis.

2. Origins of criminal behavior

Criminal behavior is a complex phenomenon influenced by various factors, including biological, social, situational, and learning factors. While the social and environmental factors have been extensively studied, the role of biological factors in criminal behavior is still not fully understood. The main biological factors associated with criminal behavior are genetics, brain structure and function, hormones, and neurotransmitters. Genetics is one of the most studied biological factors of criminal behavior. Research has shown that there is a heritable component to criminal behavior, meaning that it can be passed down from generation to generation. Twin studies have found that identical twins, who share 100% of their genes, are more likely to have similar criminal behavior than fraternal twins, who share only 50% of their genes (Raine, 2014). Moreover, specific genes, such as MAOA and CDH13, have been linked to criminal behavior (Brunner et al., 1993; Tiihonen et al., 2015). However, it is important to discern that genetics is not the sole determinant of criminal behavior, as environmental factors can also play a significant role. Another biological factor that has been linked to criminal behavior is brain structure and function. Neuroimaging studies have shown that individuals with criminal behavior have different brain structures and activity patterns compared to non-criminal individuals (Raine, 2014). Concretely, the prefrontal cortex, which controls the decision-making and impulse control, is

often found to be impaired in individuals with criminal behavior (Raine et al., 2000). Furthermore, abnormalities in the amygdala, which is responsible for emotional processing, have also been linked to criminal behavior (Kiehl et al., 2001). Hormones, such as testosterone, have also been studied in relation to criminal behavior. Research has found that individuals with high levels of testosterone are more predisposed to engage in criminal behavior, particularly violent crimes (Dabbs & Morris, 1990). This may be because testosterone is associated with increased aggression and dominance, which can lead to criminal behavior. Finally, neurotransmitters, such as dopamine and serotonin, have been implicated in criminal behavior. Dopamine is associated with reward and motivation, and research has shown that individuals with criminal behavior have reduced dopamine function (Ettinger et al., 2013). Serotonin, on the other hand, is associated with impulse control and mood regulation, and low levels of serotonin have been linked to increased aggression and impulsivity (Linnoila & Virkkunen, 1992).However, none of these elements, nor the biological factors in general, work independently but are influenced by other groups of factors. The next group of factors are social factors. Social factors have a very important role in the development of criminal behavior. While there are many social factors influencing criminal behavior, we will focus on family, poverty, education, peer influence, and media. Family is a very important social factor in the context of the development of criminal behavior. Research has shown that individuals who grow up in families with high levels of conflict, violence, and neglect are more likely to engage in criminal behavior (Farrington et al., 1990). Moreover, the absence of a positive parental figure or a lack of parental monitoring can increase the likelihood of criminal behavior (Farrington et al., 1990).In other words, a healthy family generally plays a crucial role in upbringing and development of healthy individuals who will be less prone to criminal activities, but, as is the case with all the other factors, we cannot neglect influence of other factors. Poverty is one of the most studied social factors of criminal behavior. Research has consistently shown that individuals from low-income families are more likely to engage in criminal behavior than those from higher-income families (Sampson & Laub, 1995). Poverty can lead to a lack of opportunities, limited access to resources, and exposure to high levels of stress, all of which can increase the likelihood of criminal behavior (Wilson & Kelling, 1982).Education is another important social factor. Individuals with lower levels of education are more susceptible to engage in criminal behavior than those with higher levels of education (Sampson & Laub, 1995). Education provides individuals with skills and knowledge that can lead to

better job opportunities and higher income, which in turn can reduce the likelihood of criminal behavior (Lipsey & Derzon, 1998).Peer influence is also an important social factor associated with criminal behavior. Research has shown that individuals who spend time with delinquent peers are more probable to engage in criminal behavior (Thornberry & Krohn, 2000). This may be because delinquent peers can provide individuals with opportunities, support, and encouragement to engage in criminal behavior.Other factors that have an effect on development of criminal behaviors are situational factors and learning factors. Situational factors, such as poverty, family dysfunction, and exposure to crime, can also contribute to the development of criminal behavior (Wikström et al., 2013). For example, children who grow up in poverty are prone to engage in criminal behavior as adults (Sampson & Laub, 1997). Similarly, individuals exposed to crime in their communities may be more likely to engage in criminal behavior themselves (Wikström et al., 2013).Learning factors, such as socialization and reinforcement, also influence the development of criminal behavior. Socialization is the process of adopting social norms and values, which can influence an individual's behavior (Akers & Sellers, 2013). Reinforcement is the process of rewarding or punishing behavior, which can shape an individual's behavior over time (Bandura, 1977). For example, individuals exposed to violence at a young age may learn that violence is an acceptable way to solve problems. We should also stress the enormous influence of media on the development of criminal behavior in individuals. The media with mass reach, be it legacy media or new media, influence the daily lives of people with their content. Social media have a particularly troublesome influence on the development of criminal behavior, as it projects several aforementioned factors to a very large populace, and through them, other factors social and learning factors can be applied, from peer influence to socialization, and while legacy media can be regulated to some degree, social media is very difficult to regulate as it is based on user-generated content.

As we can see, the development of criminal behavior is a very complex phenomenon as there is a myriad of factors that can influence individuals to exhibit criminal behavior. On the other hand, understanding that multitude of factors can be helpful in the identification of early signs of criminal behavior before it is fully exhibited, so a certain degree of preventative actions can be undertaken in order to correct the course those individuals are taking and help them to socialize and become valuable members of society.

3. Importance of criminal profiling in the prevention and suppression of criminal behavior

The topic of criminal profiling in investigations is a complex issue that poses challenges for definition due to its inherent ambiguities and underestimated nature. Profilers are experts who construct psychological profiles of both perpetrators and victims, aiming to capture their real-life characteristics as closely as possible. Although profiling begins on a solid scientific basis, intuition and imagination gradually come to play a significant role in the process. Seasoned criminal investigators constantly consider the perpetrator of a crime and, as they gather information, manipulate it in various ways in their minds. They then use this information to imagine the person, developing a clearer and more detailed image of the individual and making reasonable predictions about their potential reactions in specific situations (Bjelajac, Merdović & Filipović, 2023).Criminal profiling has become an integral aspect of crime-solving procedures, and it can also serve as a preventative measure in and of itself (Bjelajac & Filipović, 2023). However, experts have conflicting opinions on how effective the profiling can be in prevention of crime. Some proponents of criminal profiling argue that profiling can help prevent criminal behavior by providing law enforcement with insights into the psychological makeup of offenders, which can help them anticipate and prevent future crimes. For example, a profiler might identify certain behaviors or patterns that are indicative of a specific type of offender, such as a serial killer or a sexual predator, which can help police focus their investigations and increase the likelihood of capturing the offender before they can commit additional crimes (Canter & Alison, 1999). Critics of criminal profiling, however, argue that the technique is often based on subjective assessments and stereotypes, and that it is of limited value in preventing criminal behavior. Some studies have even suggested that profiling can sometimes be counterproductive, as it can lead investigators to focus too narrowly on certain suspects and overlook other potential leads (Snook et al., 2007).Overall, while criminal profiling can be a useful tool in some cases, it is not considered to be a reliable or effective method for preventing criminal behavior on its own. Rather, preventing criminal behavior requires a multifaceted approach that includes addressing the underlying social, environmental, and psychological factors that contribute to criminal behavior, as well as implementing effective law enforcement strategies and policies (Farrington & Welsh, 2006).Education plays a crucial role in equipping investigators with the necessary psychological, criminological,

criminalistic, sociological, and other skills required to analyze information and clues in cases of serious and complex crimes. Due to the limited availability of evidence and information in such cases, investigators heavily rely on their intellectual capabilities within the framework provided by their acquired knowledge and expertise. This enables them to navigate through the intricacies of the investigation process and make informed judgments and deductions (Bjelajac & Filipović, 2022a). However, knowledge of profiling techniques can be central to the early identification of potential abusers and criminals, so the social workers, pedagogues, teachers, children psychologists, and others involved in the process of education and socialization of children and youth shall at least have basic knowledge so they would be able to react much quicker and potentially prevent such early cases ever to become serious cases of development of criminal behavior, as parents, social workers, and authorities responsible for ensuring public safety often lack specific tools or frameworks to effectively recognize individuals who may become future perpetrators of criminal offenses (see more: Bjelajac & Filipović, 2022b).On the other hand, criminal profiling has an important role in the suppression of criminal behavior. Profiling can play a role in the suppression of crime by providing law enforcement with insights into the psychological makeup of offenders, which can help them anticipate and prevent future crimes. The primary function of criminal profiling is to detect and apprehend offenders, and there are numerous instances of very difficult cases solved only when criminal profilers became involved (see more: Douglas, Burgess & Ressler, 1995). In addition to helping law enforcement agencies solve crimes, profiling can also play a role in the suppression of crime by identifying patterns of criminal behavior and helping to develop effective prevention strategies. By analyzing crime scene evidence and identifying commonalities among offenders, profilers can provide law enforcement agencies with information on potential future offenders, as well as the types of crimes that are most likely to be committed in certain areas (Canter & Alison, 1999).The knowledge that they will be caught and captured is generally an excellent preventative measure for would-be criminals never to engage in criminal acts.

4. Criminal profilers – human lie detectors

The ability of discerning the truth from lies has always been a key element in criminal investigations, whether interrogating suspects or talking to potential witnesses. Generally, the human pursuit of truth and the desire to be able to detect lies has been a fascination as well as the topic of interest

for thinkers and researchers in many areas, from philosophy and psychology to crime studies. Unable to precisely and consistently discern lies from the truth, humankind used various objects and later machines to help them in this endeavor, but none of such objects or inventions proved accurate enough. Some ancient tribes used very fragile eggs of large birds and put them into the hands of potential perpetrators, and if the egg cracked, that was interpreted as a sign that the person lied since their hands were shaky and unstable. Naturally, such an interpretation is very inaccurate, as someone's hands can be shaky for a myriad of reasons, including lying, but without any context, jumping to such conclusions meant that many innocent people were punished while the guilty ones walked free. It is similar to the current invention widely used for lie detection, the polygraph. The polygraph, or the lie detector, is a device that measures physiological changes in a person's body as they answer a series of questions. These changes are believed to be indicative of the person's level of arousal or anxiety, which can be associated with lying. The polygraph typically measures several physiological responses, including heart rate, blood pressure, respiration, and skin conductance (National Research Council, 2003). While the polygraph has been used extensively in law enforcement and other settings as a tool for detecting deception, its scientific validity and reliability have been widely debated. The accuracy of the polygraph has been challenged by research showing that people can learn to manipulate their physiological responses and that the device can produce false positives or false negatives (Saxe, Dougherty & Cross, 1985). Despite these criticisms, the polygraph remains in use in some contexts, such as in pre-employment screenings for government agencies or in investigations of specific crimes. However, its limitations and potential for inaccuracy suggest that it would have be used with caution and in conjunction with other methods of evidence-gathering and analysis.

Since the machines or other objects before proved not accurate enough as they cannot provide context or understanding of the inner processes of the person who is interrogated, the best remaining option for law enforcement is to train investigators and criminal profilers in detecting deception. When trained and experienced enough, these individuals typically rely on a combination of verbal and nonverbal tells, such as changes in facial expressions, body language, and tone of voice, to determine whether or not someone is being truthful.However, it is important to stress that even the ability toaccurately detect lies is not a reliable or effective method for determining guilt or innocence. In scientific literature, it has been reported that the capacity for detecting lies is limited, even among those who claim to be skilled in the

art of lie detection. Research has indicated that individuals are only slightly more accurate than chance when detecting lies, indicating that they are not significantly more skilled at identifying deception than those who make random guesses (Bond & DePaulo, 2006). One of the reasons why could be the unreliability of many of the supposed indicators of deception, such as lack of eye contact or fidgeting. Recent studies suggest that individuals who are skilled at lying may actually be better at suppressing these cues than those who are not (Vrij, 2008). However, trained and experienced professional profilers, albeit still prone to making mistakes, are generally more accurate than any lie-detecting machine, as they create a psychological profile of the interrogated person before the interrogation, so they gather as much information and context about these persons as possible, so they can better understand what is going on, if someone questioned is a skilled liar, if they have other worries that might trigger the cues and tells associated with lying, etc.

Many scientists and researchers dedicated their work on this topic, and one of the most renowned scientists with greatest results in this field is Paul Ekman. Dr. Ekman is a psychologist known for his work on emotions and facial expressions, and he has also contributed significantly to the field of lie detection. Ekman's research on facial expressions and nonverbal behavior has informed his approach to lie detection, which is based on the idea that certain facial expressions and other nonverbal cues can reveal when someone is lying.Ekman and his colleagues developed a method of lie detection based on the Facial Action Coding System (FACS), which is a standardized system for describing facial expressions. According to Ekman's approach, when people try to conceal their emotions or lie, their facial expressions may reveal "microexpressions" or brief, involuntary expressions that contradict their verbal statements (Ekman & Friesen, 1974).Ekman's method involves observing the subject's facial expressions and nonverbal behavior while they are being questioned, and looking for signs of deception such as microexpressions, changes in vocal tone, or other subtle cues. He has also developed training programs to help people improve their ability to detect deception by recognizing these cues.While Ekman's approach to lie detection has been controversial and is not universally accepted, it has had a significant impact on the field and has contributed to our understanding of the relationship between emotions, facial expressions, and deception. Additionally, Ekman has developed training programs to help people improve their ability to detect deception by recognizing these cues.

Profiling begins on a solid scientific basis, but during this process, intuition and imagination begin to prevail (Bjelajac & Filipović, 2022c).

Although there is no foolproof method of detecting if someone is lying, as neither people nor machines can provide unquestionably accurate results, the answer possibly lies in the combination of experienced criminal profilers trained in deception detection, combined with previously completed work on profiles of people who will be questioned. That work may be in the form of a complete psychological profile, but often it is enough to understand the basic backgrounds, tendencies, habits, etc., of people who are to be questioned or interrogated. Even if one uses FACS, their work is much more accurate if high-speed cameras and other technical instruments are used and checked for things that profilers might have missed when interrogating a person face-to-face. It is central to point out that none of these methods alone are applicable in courts of law as evidence, so they generally serve as guidelines and pointers on what to investigate further.But, if the investigation helped by such methods is additionally done thoroughly and accurately, such analysis may be used as a determinant of one's guilt or innocence in courts in the form of expert analysis, accompanied by physical evidence, witness testimonies, etc. Knowledge of such techniques and deception detection training programs can also be used for a variety of other professions other than law enforcement, such as teachers, social workers, psychologists, pedagogues, etc., to make them able to use the obtained skills in the detection of deception in children and young people, not quite versed in lying, and as such to form a mechanism for detection of early signs of criminal behavior and prevent it before it develops.

5. Discussion

We cannot ignore the fact that in May 2023 Serbia was shaken by two cases of mindless violence and mass murders, with dozens dead and injured in two separate cases. The first one was mass school shooting in an elementary school in Belgrade which occurred on May 3rd, 2023. The perpetrator was an underage boy, who killed 10 people (nineschoolchildren and a security guard) and wounded five more pupils and a teacher. The official mourning has not yet begun, and in the evening May 4th, 2023, in Mladenovac, a town less than 50 km south of Belgrade, a 21-year-old male committed another mass shooting, killing eight people and wounding a dozen more. The perpetrator then took two people hostage, a taxi driver and a pregnant woman who was his passenger, and demanded to drive him to a village near the city of Kragujevac in Central Serbia. After an intensive search that included several hundred police and special forces officers, the killer was apprehended

the next day in the early morning and put into custody. These two cases shook Serbian society to its core and launched numerous debates on various topics – from gun control to media promoting violence. The events also caused mass continuing protests of citizens against violence. However, it is quitecomplicated to determine the exact causes of such mindless violence, particularly at the moment when panic and fearmongeringare widespread. Still, there are some undisputed facts we can discuss. Despite having very strict gun laws, Serbia is among the countries with the most firearms per capita in the world. These are residues of the Yugoslav Wars of the 1990s, which still permeate through Serbian society, particularly in the context of unresolved territorial issues and the glorification of war criminals in parts of the Serbian public. Also, there are numerous cases that illustrate failures of justice system in Serbia, where many crimes go unpunished, or the sanctions prescribed by laws for some crimes are merely a slap on the wrist, so the criminals after serving their sentences go back and repeat crimes, such as "Malčanski berberin", a child rapist and molester who abducted an underage girl and molested her after completing his 22-yearsentence, and many other recidivist cases.Both legacy and new media are promoting violence, mostly through reality shows when talking about legacy media, and new media are very important factors for peer influence among children. There are many other factors that will surely be researched further, but here we will provide some context about the most shocking recent crime, the elementary school shooting in Belgrade.

The presented case highlights the significance of profiling minors by the psychological-pedagogical service (PPS), teachers, and parents. The minor displayed clear indicators of atypical behavior, and there were ample opportunities to prevent the negative and tragic outcome through proactive actions, particularly by parents, PPS, and teachers. These actions could have involved conducting assessments, engaging in conversations, and providing support. However, regrettably, the mentioned services and individuals demonstrated irresponsibility, lack of awareness, or disinterest in recognizing early signals of antisocial behavior. Such negligence is highly unacceptable considering the gravity of the situation.

Table 1. The case of mass shooting in elementary school Vladislav Ribnikar in Belgrade, Serbia

Basic information	**Profile of the underage perpetrator**	**Family/School/ Environment**
– Underage K.K. (13) from Belgrade, a pupil of 7th grade of Vladislav Ribnikar elementary school, with very good school achievement – On May 3rd, 2023, he entered the premises of the school he attended, and started shooting from a handgun, and killed nine pupils and a security guard, and wounded another four pupils and a teacher.	***Before the crime*** – Depressed, quiet and very withdrawn and solitary. – He had shown asocial behavior (unadjusted behavior, lack of empathy and motive to develop social feelings or to adapt to social relations). – He wasn't well accepted among his peers. – He felt rejected in his surroundings. – He planned a crime and had a list of children he planned to kill as well as the floor plan of the school. ***After the crime*** – After committing the massacre, he called the police and told them he shot at the pupils. – After the arrest, per police reports, he said: "I killed them because I am a psychopath". – Per media reports, he said without any remorse that he is sorry he did not kill all the children from the list. "I am sorry I didn't kill them all. I wanted to come back and kill them, but I dropped the backpack with Molotov cocktails in the schoolyard and I couldn't do it", the boy told social workers after the shooting.	– Absence of recognition and understanding of innate traits and tendencies of the child. – Absence of timely recognition of the problem in behavior and the upbringing of the child by parents and pedagogues and child psychology services. –Lack of interest for thoughts, behavior, actions, perception of environment and parents, peers, teachers…

6. Conclusion

When tackling crime, violence, and its consequences, societies around the world are mostly reactive, and when something terrible happens, the majority of discourse and activities are directed to finding the one responsible party or a singular reason why such crimes happened. However, there are no punitive measures that will instill so much fear in potential perpetrators to force them to abandon their violent plans or reactions. Contrary to that, society shall undertake preventative measures. Understanding the roots of criminal development, recognizing traits that stem from studied factors of the development of criminal behavior, and training of personnel from various professions to recognize and treat the early signs of potential violent or criminal behavior isof paramount importance. Here's where methods and techniques used by criminal profilers come to play – if learned and adopted in the everyday work of teachers, pedagogues, psychologists, school managers, and security officers, it may help in recognition and reaction to these early signs, which, in turn, may prevent such crimes from occurring. Nothing is guaranteed, but every life is precious, and if such an undertaking helps to stop one potential murderer from committing the crime, it would pay off instantly.

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KRIMINALISTIČKI PROFAJLERI – ŽIVI DETEKTORI LAŽI

REZIME: Ljudi su od davnina bili skloni da analiziraju i procenjuju druge ljude, ali i životinje, predmete i slično, čak i u svakodnevnim situacijama, tako da je pomalo neobično da je kriminalističko profilisanje postalo deo redovnih istražnih procedura u organima za sprovođenje zakona tek

osamdesetih godina dvadesetog veka. Uloga kriminalističkih profajlera primarno se ostvaruje kroz rad na rešavanju učinjenih kompleksnih krivičnih dela gde je učinilac nepoznat, ali takođe svojim delovanjem vrše kako supresivni, tako u manjoj meri i preventivni efekat, koji postaje amplifikovan uključivanjem elemenata faktora rizika za razvoj kriminalnog ponašanja, kao i kriminalističku fenomenologiju. Tehnike koje se koriste u kriminalističkom profilisanju pomažu u ranom prepoznavanju simptoma koji ukazuju i na biološke, socijalne, i faktore okruženja, uključujući faktore učenja i situacione faktore. Krećući se između faktora geneze kriminalnog ponašanja, supresije i prevencije kriminaliteta kao posledice rada kriminalističkih profajlera, dolazimo do uloge profajlera u detektovanju laži, i neophodnosti ljudskog prisustva i intervencije u raznim formama formalnih razgovora, bilo da se radi o sprovođenju zakona, socijalnom radu ili edukaciji. Cilj ovog rada je sistematski rasvetliti faktore koji doprinose razvoju kriminalnog ponašanja, istražiti fenomenologiju kriminala i istaći ulogu kriminalističkih profajlera u prevenciji i supresiji kriminaliteta, kao i analizirati njihovu ulogu u procesu detekcije laži, uz davanje preporuka za inkorporaciju profajlerskih tehnika u korpus znanja i veština nastavnika, pedagoga, psihologa, socijalnih radnika i drugo. Metode koje su korišćene u ovom studiju obuhvataju kvantitativnu i kvalitativnu analizu, korišćenje primarnih i sekundarnih izvora, kao i komparativnu analizu.

***Ključne reči**: kriminalističko profilisanje, razvoj kriminalnog ponašanja, faktori rizika, detekcija laži, prevencija kriminaliteta.*

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CHILD RIGHTS: INTERNATIONAL STANDARDS AND THEIR IMPLEMENTATION IN THE LEGAL SYSTEM OF REPUBLIC OF SERBIA[1]

ABSTRACT: As a necessary consequence of the strengthening of human rights, there appears the idea and movement of the existence of the child rights separated from the human rights. These are the rights which will pull out the child from the grip of the powers not only of the state, but also of the parents, and will allow the child to be viewed as a separate human being, with his/her own rights, his/her own identity, integrity and dignity. This idea will be spread so much by the end of the twentieth century that it will lead to significant phenomena and changes at the international level. Normative activity within the United Nations has never produced such a result as the UN Convention on the Rights of the Child. An almost universally accepted legally binding document has, in an extremely short period of time, set fairly high uniform standards of children's rights at the global level. We will see that the domestic legislator did not follow the tendencies of the international community to a sufficient extent, so it was only in 2019 he took certain political steps to correct the given situation, but without sincere desire or strong will enough to complete the procedure.

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In contrast to the universal level where the child rights de facto codified in the UN Convention on the Rights of the Child, at the national level they remain fragmented, with many gaps recognized by the domestic public authorities.

Keywords: *child rights; international standards; national standards; the Convention on the Rights of the Child; the Draft Law on the Rights of the Child.*

1. Introductory remarks

Since the second half of the twentieth century, one of the most powerful movements at the international level has certainly been the movement for the protection of human rights. From that movement, we will see, a movement for the protection of children's rights will also arise. The emancipation of children's rights, i.e. their separation from the sphere of general human rights, is certainly justified considering their psychological and physical immaturity. The particularly vulnerable and sensitive position of children justifies, even demands, a special regime for the protection of their position, rights and interests. Thus, we will see, over time, the child will be recognized with many civil, political, economic, social and cultural rights, and the position of the child in modern society will be significantly improved.

Generally speaking, the oldest concept of relationship meant that parents have power over their children as over things, and freely dispose of them. However, with the extremely long development of society, the concept of children's rights was finally created, which begins to limit the power of parents over children. Certainly, the emergence and development of the concept of children's rights can be seen as a necessary continuation of the process of development of general human rights. Namely, just as with the development of human rights and freedoms, individuals were freed from decisions made "on their behalf and in their best interest" by the state, embodied in the monarch or later the ruling group, so, in truth, much later, the rights of the child began to develop, which limited parents' ability to manage their children's lives "in their best interests." As a consequence of the social movement to liberate man from power, with the concept of human rights, the concept of children's rights as a separate segment of human rights is also developing strongly and rapidly. The normative activity of the international community will be particularly developed in the second half of the twentieth century, which will culminate in the adoption of the comprehensive UN Convention on the Rights of the Child,

which will then become the basis for building international and national systems for the protection of children's rights in modern society.

In Serbia, in the period up to the nineties of the last century (FRY), the economic, social and cultural rights of the child were exercised at a relatively satisfactory level. Thus, every child could receive free education, have health care and be a user of numerous services within the social system. At the same time, this situation precluded the enjoyment of the child's political and civil rights. The child was legally and factually voiceless in society, school, family or institution. Such a position of the child was a consequence of the traditional, "protective" attitude of society, parents or extended family members.

This paper seeks to provide an overview of the international standards for the protection of the rights and position of the child contained in the most significant and universal international legal instruments dedicated to the rights of the child, and to point out the national normative frameworks regulating the rights of the child and those by which international standards are implemented in the domestic legal order. The paper also gives suggestions as to how this issue should be regulated *de lege ferenda at the national level.*

2. International standards for the protection of children's rights and their development

Children's rights first received the attention of the wider international community after the end of the First World War. Thus, Draškić (2009, p. 38) notes that even before the United Nations was formed, certain changes in the understanding of the position and rights of the child began, and that the moment it became clear that international standards could and must be adopted apply to children, the process of "internationalization of children's rights" began, which was first materialized in the Declaration on the Rights of the Child from 1924, which was adopted by the Assembly of the League of Nations, and then, in an expanded form, the United Nations adopted a new Declaration on child rights 1959. This Declaration, made in the light of the consequences of the First World War, primarily concerned the material needs of children, that is, the need to provide them with food, care, shelter, or help (Freeman, 1983, p. 19).

Upon its formation, the United Nations will take over the Declaration on the Rights of the Child from 1924, but soon after the adoption of the Universal Declaration on Human Rights from 1948, the shortcomings of the Geneva Declaration were noticed (Samardžić, 2018, p. 27), so that on the 20 In November 1959, the Declaration on the Rights of the Child was unanimously adopted by all members of the UN General Assembly.

Samardžić (2018, p. 29) also highlights international legal acts of a universal character as relevant for establishing and protecting the position and rights of children, although these documents do not specifically refer to children. Thus, as one of the basic documents, the Universal Declaration of Human Rights is highlighted,[2]which contains a provision on the family – the family is considered a natural and basic unit of society, and the right of men and women to marry and found a family is highlighted; proclaims their equal rights in marriage and states that consent to marriage should be given freely. In particular, Article 25, paragraph 2 guarantees the child's special right to special care and assistance. Although the Declaration does not abound in provisions dedicated to children, this provision clearly indicates that the rights and position of children and families were in the minds of the authors of the Declaration, although the primary focus of the Declaration, we believe, was on strengthening the rights and position of man, as an individual, after the end of one of the biggest destruction in the history of mankind.The Universal Declaration will then represent one of the starting points for the adoption of the UN Convention on the Rights of the Child, and will occupy an important place in the preamble of this Convention.[3]

Also, it can be considered that of general importance for the position and rights of the child, prior to the UN Convention on the Rights of the Child,

[2] The Convention was adopted by the General Assembly of the United Nations by Resolution 217A of December 10, 1948 in Paris; Like other declarations and acts of the UN General Assembly, they do not have a legally binding nature, until they are accepted and incorporated into the internal legislation of the member states. Therefore, these acts represent the position and will of the international community, but have no legal effect. However, we believe that the generally accepted position on the obligation and binding of states to the provisions of this Declaration is correct. Namely, as the Declaration in question was adopted without votes against it, and as over a long period of time, the practice of almost all countries is in agreement with the provisions of this Declaration, we believe that many of its provisions have become part of customary international law, and given that both constitutive elements: 1) *opinio iuris and* 2) state practice. Therefore, we believe that certain provisions of this Declaration have the status of *ius cogens* norms of international law.

[3] Although, strictly speaking, it is not necessary for the General Assembly of the United Nations to express a legal basis for the adoption of any act, it is the practice of the General Assembly that it will always refer to the appropriate rules contained in the Charter of the United Nations, as well as other resolutions, recommendations, conventions or rules that were adopted by this Assembly. The UN Convention on the Rights of the Child strongly invokes and relies on the Universal Declaration of Human Rights, citing it in several paragraphs of its Preamble. The UN General Assembly almost explicitly based the adoption of the UN Convention on the Rights of the Child on the Universal Declaration as a legal basis. The only conclusion that can be drawn from this is that the provisions on children's rights are considered an extension of the rules contained in the Universal Declaration and represent its logical consequence.

were the International Covenant on Civil and Political Rights, which, among other things, prescribed an explicit ban on discrimination against children on any grounds; and expressly provides that every child will be registered immediately after birth and will be given a name, as well as that every child has the right to citizenship (Art. 24). International Covenant on Economic, Social and Cultural Rights aprescribes the obligation of the contracting states to recognize the right of every person to enjoy the best state of physical and social health that he can achieve (Samardžić, 2018, p. 28).

The normative activity of the United Nations in the field of protection of the rights and position of the child was intensive from the very beginning, so a considerable number of instruments were adopted that directly or indirectly strive to protect the position of children (Holzscheiter, 2010, p. 117). Thus, at the level of the United Nations, the UN Convention on Consent to Marriage, the Minimum Age for Marriage and the Registration of Marriages from 1962 was adopted and the Recommendation on Consent to Marriage, the Minimum Age for Marriage and the Registration of Marriages (1965 year), achieved the proclaimed goals , i.e. achieved certain results. Jovašević (2008, p. 475) points out the rules for juvenile criminal justice (the so-called Peking Rules) adopted by the UN in 1985 as relevant instruments for improving the situation of minors, 4) the UN Rules on the Protection of Minors Deprived of Liberty (the so-called Havana Rules) from 1990, 5) UN Guidelines for the Prevention of Juvenile Delinquency (so-called Riyadh Guidelines) from 1990, 6) UN Standard Minimum Rules for Alternative Penal Measures (so-called Tokyo Rules) from 1990 and 7) European Rules on social sanctions and measures for the implementation of juvenile criminal justice (the so-called Vienna Rules) from 1997.

Also, from the aspect of protecting the rights and position of the child, of particular importance, as an international instrument of universal character, ILO Convention No. 182 on the worst forms of child labor and ILO Recommendation No. 190 on the prohibition and urgent action for the abolition of the worst forms of child labor, but and Convention No. 138 on the minimum age for work (Vujović, 2016, p. 188 et seq.).Also of importance are the International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the elimination of all forms of discrimination against women, Convention against torture and other cruel, inhuman and degrading treatment or punishment; Convention on the Rights of Persons with Disabilities; United Nations Convention against Transnational Organized Crime, United Nations Protocol to Prevent, Suppress and Punish Trafficking in Human Beings, Especially Women and Children, as Supplement to the United

Nations Convention Against Transnational Organized Crime; Conventions adopted under the auspices of the Hague Conference on Private International Law that the Republic of Serbia has confirmed and two that will be confirmed during this year (on international adoption and child protection). In addition to the above, within the framework of the UN, a large number of instruments have been adopted that directly or indirectly strive to protect the position of children(Holzscheiter, 2010, p. 117).[4]

2.1. United Nations Convention on the Rights of the Child from 1989

When we talk about the rights of the child at the universal level, certainly the most important act that was adopted is the UN Convention on the Rights of the Child from 1989 (hereinafter: the Convention).

Petković & Pavlović (2016, p. 181) state that this Convention represents the most important and basic international legal document which emphasizes the importance of ensuring the conditions for full respect of children's rights, dignity and value of human personality.The convention is the result of many years of work[5], and the very beginning of work on the document that will deal with children's rights was stimulated on the one hand by the development of the perception of children as special individuals, and on the other hand by the accelerated consolidation of international human rights law (Detrick, Doek & Cantwell, 1992, p. 19). On November 20, 1989,

[4] Listing and explaining in detail each individual international instrument that directly or indirectly refers to the position and rights of the child would greatly exceed the scope of this paper, and would be suitable for the preparation of a doctoral dissertation. Therefore, in this paper, along with a brief overview of the evolution of regulations on children's rights within the League of Nations and the United Nations, the UN Convention on the Rights of the Child is presented with its key provisions, as well as other instruments that the author considered to be the most important.

[5] At the 34th session of the United Nations Human Rights Commission in 1978, it was pointed out that children have suffered through wars and other forms of aggression, and that it is necessary and justified to protect their position in particular. At the same session, the Polish delegation presented a draft proposal for a convention on the rights of the child, which was based on the United Nations Declaration on the Rights of the Child from 1959 and the Universal Declaration on Human Rights from 1948. The proposal was then circulated to governments and international organizations for their observations, objections and suggestions. Soon, a working group was formed that worked on the proposals sent by individual states, that is, organizations. Only after a full ten years (although the Convention was originally intended to be adopted in 1979) did the Working Group submit the final draft of the text of the Convention, which, after its adoption by the UN Human Rights Commission and the Economic and Social Council, was sent to to the UN General Assembly for adoption.

the General Assembly adopted the Convention on the Rights of the Child, without a vote, and thus this Convention became unique among acts related to human rights.[6] Surely, respecting the previous achievements in the normative regulation of the position and rights of the child, the Convention itself refers to earlier documents and respects their achievements, expanding the previous work (Petković & Pavlović, 2016, p. 182), and the rights prescribed by the Convention itself represent a synthesis of efforts to ensure the highest possible quality of life of the child , and the best possible protection of the sensitive position of the child.

General term, Convention a points out four basic procedures (basic standards) on which it is based (similarly to Samadžić, 2018, p. 31) and which represent the starting point for every single legal rule contained in it: a) prohibition of discrimination – where, in Article 2, the obligation is emphasized the contracting state to non-discriminatoryly respect and ensure the rights stipulated in the Convention to every child; (Petković & Pavlović, 2016, p. 182); b) the obligation to promote the best interests of the child in all activities concerning children (Stefanović & Prelević, 2012); c) the right to survival and development of the child and g) the right of the child to be heard and to have his opinion given due attention (Lansdown, 2022, p. 41).The Convention itself has three parts, which do not bear special names. However, according to the nature of the provisions contained in the parts, we can conditionally make the division so that the first part includes substantive legal provisions (substantial norms) that prescribe the rights of children; the second part contains provisions on the formation of the Committee for the Rights of the Child as a body that supervises the implementation of this Convention and the third part of the Convention contains final provisions concerning its entry into force, validity, ratification, accession, etc.

With regard to the substantive norms themselves, we will outline the most relevant for the general position of the child and his rights. Thus, already in Article 1 of this Convention, the United Nations defines once and for all, from the aspect of international law, the definition of a child – a child is any human

[6] It is interesting to note that this convention is the most widely and rapidly ratified convention ever. As many as 196 countries have acceded to this Convention, and until today only the United States of America, in whose company Somalia was for a long time, which, however, passed its instrument of ratification on October 1, 2015. Therefore, bearing in mind these facts, but also the rules on the emergence of customary international law, it could be argued that the rights contained in this Convention are at the same time the rules of customary international law, and on that basis are *ius cogens* norms and are *applied* to all states regardless of their ratification, unless they consistently and expressly opposed the creation of a customary legal rule.

being[7] who has not reached the age of eighteen. Therefore, this provision sets a kind of age limit for childhood – 18 years. Such a definition is primarily of international legal character and effect.[8] This age limit must be applied by member states both as a rule and as a reference point, for determining any other age for any specific purpose or activity (Pais, 1997, p. 414). This would further mean, we believe, that the contracting states cannot condition the exercise of rights or privileges by a later age.[9]

However, the same article allows for the possibility of coming of age even earlier, when this is prescribed by the national law applicable to the child. This provision should not be interpreted as a general clause for avoiding the obligations arising from the Convention, nor as enabling the establishment of those ages that are not in accordance with its principles and provisions (Pais, 1997, pp. 414-415). The Committee on the Rights of the Child emphasized that where the age of majority is set below eighteen, Member States are expected to indicate how all children benefit from such protection and enjoy their rights under the Convention until they reach the age of 18. The Committee sought justification for any reduction in child protection and urged member states to review to ensure that all children up to the age of 18 continue to receive the full protection of the Convention (Lansdown & Vaghri, 2022, p. 410). The Human Rights Committee has also emphasized that States Parties cannot be relieved of their obligations towards children under the age of 18 even where they have reached the age of majority under domestic law (OHCHR, 1989, para. 4). It follows from this that the possibility of attaining the age of majority was previously foreseen as an exception that should be narrowly interpreted and conservatively applied, but which will not release the state from the obligations provided for in the Convention; in other words, a contracting state may, by prescribing a lower age for attaining majority, grant greater rights, but

[7] This wording is not accidental. We believe that by opting for the wording "human being" the authors of the Convention tried to avoid the question of when human life begins, i.e. when an embryo or fetus can be considered a living being, and considering the fact that the moment of the beginning of life, but also the issue of abortion, is extremely a politically disputed issue that divides states and societies, and the wish of the authors of the Convention was for it to be as universally accepted as possible.

[8] This determination, however, is not absolute even at the level of international law. Thus, Article 38 of the Convention foresees an exception to this rule – a child for the purposes of the rules on participation in armed conflicts is considered a person who has not reached the age of 15.

[9] Thus, with regard to the United States of America, certain rights and privileges are limited, that is, conditioned by the age of over 18 years. For example, only a person who has reached the age of 21 can buy and consume alcohol, according to the Law on the Minimum Age for Consumption of (Alcoholic) Beverages from 1984. If the USA would ratify the Convention, this Act, as well as many others (both federal and federal units), would have to be changed or repealed.

not impose those obligations and duties on persons under 18 years of age that are incompatible or contrary to the provisions of this Convention.

Article 2 of the Convention expressly prohibits discrimination and discriminatory practices against children, that is, any person under the age of 18, based on any personal characteristic of the child, as well as the characteristics and status of his or her parent or guardian. On the other hand, the same article (paragraph 2) foresees the positive obligation of the contracting states to take all appropriate measures to ensure the protection of the child from forms of discrimination or punishment based on the status, activities, expressed opinion or belief of the child's parents, legal guardians or members families. The provisions of this article are one of the basic postulates and international legal standards not only of children's rights, but also of general human rights (Lansdown, 2022, p. 11 et seq.). Also, as one of the basic postulates of this Convention (Ruggiero, 2022, p. 22), but also of children's rights in general, Article 3 of the Convention prescribes that in all activities concerning children, regardless of whether they are undertaken by public or private institutions of social guardianship, courts, administrative authorities or legislative bodies, the best interests of the child shall be of primary importance. [10]The child is therefore recognized as having the "right to have his or her best interests" assessed and taken into account as a primary factor in all actions or decisions concerning him or her, both in the public and private spheres" (UN Committee on the Rights of the Child , 2013, paragraph 1). The UN Committee on the Rights of the Child (2003, paragraph 12, 2009, paragraph 2) considers that Article 3 supports all other provisions of the Convention. At the same time, it should be noted that the concept of the best interest of the child is one of the most complicated concepts to determine, and the Committee defines it as "*a dynamic concept that requires an assessment that corresponds to the specific context.*"

Article 6 of the Convention guarantees the right to life of every child, which is acquired by birth itself, and prescribes the positive obligation of the contracting states to ensure the survival and development of the child to the greatest extent possible. It is important to point out that this provision introduces the right to survival and development for the first time in an international agreement (Vaghri, 2022, p. 32). From the wording of paragraph

[10] Freeman (2007, pp. 25-26), however, criticizes this formulation. This is because in the wording of the Declaration from 1959, the best interests of the child should be "paramount in consideration", so that the best interests of the child are of crucial importance in the decision-making process, while in Article 3(1) of the Convention they are only of "primary consideration" importance" – thus one of the possible determining factors.

1 of this article – "*Contracting parties recognize that every child by birth has the right to life*"- it follows that this right, according to its nature, is the (only) inherent right of the child, and it extends beyond the negative obligation of non-interference, imposing a proactive obligation on contracting states to take all comprehensive legislative, administrative and other positive measures to ensure the inherent and indivisible right to life and survival and development of the child (Nowak, 2005, pp. 17–18). In connection with this right, the provision of Article 37, of the Convention should be highlighted according to which the contracting states undertake "*that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.*" *Neither the death penalty nor life imprisonment, without the possibility of parole, shall be imposed for acts committed by persons under the age of 18.*[11]Although the right to life is not absolute, the standard for justifying any failure to protect a child's life is extremely high (Peleg & Tobin, 2019). States parties are required to provide explicit protection in law that includes strict limitations on measures that arbitrarily and non-arbitrarily deprive a child of life (Nowak , 2005, p. 2).

Furthermore, Articles 7 and 8 guarantee the child a body of personal rights that includes the right to be registered immediately after birth, and from birth he has the right to a name, the right to acquire citizenship and, as far as possible, the right to know who his parents are and the right to their care, and the possibility of the child being stateless is eliminated (Article 7), and the contracting states undertake to respect the child's rights to preserve identity, including citizenship, name and family relations in accordance with the law, without illegal interference (Article 8). Article 7 introduced a new component confirming the child's right to know his origin and to be cared for by his parents, recognizing that parental care is as important for the child's psychological stability and development as name and nationality (OHCHR and Rädda Barnen (Society: Sweden), 2007, pp. 379-380).Essentially, Articles 7 and 8 aim to facilitate the recognition of the legal subjectivity of the child as a human being independent of his parents, capable of exercising his own rights (Hodgkin et al., 2007, pp. 97-109). It should also be emphasized

[11] In accordance with Article 37, Article 6 must be interpreted as prohibiting the death penalty (UN Committee on the Rights of the Child, 2010, paras. 32–33, 2012a, paras. 37–38); We believe that this provision implicitly states that the death penalty for a person under the age of 18 represents cruel, that is, inhuman treatment. Also, we believe that this provision was one of the main reasons that the US did not ratify this Convention. Namely, in the USA, the death penalty against minors was not considered an inhumane or cruel treatment until 2005 (that is, 16 years after the adoption and 15 years after the entry into force of this Convention) when the Supreme Court of the USA in the case of *Roper v . Simmons* held that the death penalty against minors as unconstitutional, because he considered it to be an inhumane and cruel punishment.

that Articles 12-14 of the Convention stipulate that the signatory states shall ensure to every child capable of forming his own opinion the right to freely express that opinion on all issues concerning the child, and he has the right to express himself, to receive and give information in regarding everything that concerns him, and the opinion of the child will be given due consideration in every procedure that concerns him. The right of thought, conscience and religion is especially guaranteed. These guarantees, viewed together, enable and strengthen the role of the child in any procedure that concerns him, that is, it gives him the opportunity to participate in such a procedure.

3. National normative framework for the protection of children's rights

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

Like many modern countries, the Republic of Serbia prescribes and guarantees certain human rights in its Constitution. Marković (2013, p. 460) points out that by guaranteeing of human rights, the state in fact sets a limit that it must not cross, if it rests on democracy, because even though democracy is not reduced to human rights, it does not exist without them.

When it comes to the Constitution of Serbia, the second part is devoted to human rights, which is also the title "Human and minority rights and freedoms". Within this part of the Constitution, human rights that fall within the domain of family law are within the group of social rights, which are otherwise considered new rights (Marković, 2013, pp. 483-484). The framer of the Constitution made an interesting mistake when he decided to include the rights of the child in the same group of rights and, for example, the right to work.In terms of the application and protection of both human rights and children's rights, it can be said that the Constitution of Serbia from 2006 establishes a relatively broad normative framework for regulating human rights and children's rights. When it comes to human rights in general, the previous statement is not disputed in the least, bearing in mind the fact that almost 60 articles of the Constitution are dedicated to human rights. However, when it comes to children's rights, explicit constitutional provisions that refer exclusively to children's rights are few and far between. However, for the first time in the constitutional history of our country, the current Constitution expressly provided for rules on rights of the child, namely in Article 64, entitled "Child's Rights" (Analysis, 2011, p. 10).

In the light of the presented international standards, several things should be pointed out. Guided by the provisions of international instruments, in Article 64, paragraph 1 of the Constitution, our constitution enactor provided that children enjoy human rights appropriate to their age and mental maturity. This provision, which is essentially declarative in nature, cannot be criticized in particular. However, we still think that the constitutional enactor could have been more careful in choosing words. Namely, in the light of current movements and imperative rules on non-discrimination, we believe that the words *"mental maturity"* were superfluous. It is not disputed that the text of the provision was drafted in good faith and with good intentions. However, it is a well-known fact that some children, due to various medical reasons, do not reach certain levels of mental maturity and development. Certainly, these children enjoy full rights that are guaranteed to them both by international instruments and domestic law. The scope, quality and realization of their rights is not, therefore, conditioned by any level of mental maturity, nor can it be. Therefore, such words did not have to, nor should they, be found in this (in any case declarative) constitutional provision.

However, paragraph 2 of Article 64 of the Constitution is a substantive legal norm, and stipulates that every child has the right to a personal name, registration in the birth register, the right to know his origin and the right to preserve his identity. By prescribing in this way, the domestic constitution-maker fully complied (if not literallytook over) with the provisions of Article 7 of the Convention. However, our constitution maker went one step further. Namely, where in Article 7 of the Convention the right to know the origin remained relatively optional – *"and as far as possible"* – our constitution maker, and what is allowed by Article 41 of the Convention – provides more rights for the child by excluding any condition and establishing as the absolute right of the child to know his origin (Draškić, 2009, p. 5 et seq.). Although the child's right to integrity and identity should be supported as much as possible, the necessary caution should be pointed out when prescribing absolute rights. Namely, in modern times, adoptions and biomedically assisted conceptions that include donors are not as rare as they were in the nineties of the last century. With the correct linguistic and objective interpretation, the only logical conclusion is that the constitution-maker excluded the possibility of anonymous donation, because any contractual clause guaranteeing anonymity would be null and void as contrary to the

Constitution.[12]Thus, the Committee on the Rights of the Child emphasized the need to understand the term *"parent"* in its broadest sense to include "*biological, adoptive or foster parents or members of the extended family or community as provided by local customs*" (UN Committee on the Rights of the Child, 2013b, paragraph 59).

Following international standards, our constitution maker blanketly prohibits psychological, physical, economic and any other abuse and exploitation (Article 64). Furthermore, paragraph 4 of the same article guarantees that children born out of wedlock have the same rights as children born in marriage. Interestingly, this protective provision is not explicitly provided for in the provisions of the Convention. However, Article 25, paragraph 2 of the Universal Declaration stipulates that all children are equal, regardless of whether they are born in marriage or out of wedlock. As the Convention invokes and relies on the Universal Declaration, it is clear that this protection is also provided. However, we believe that the text of the Convention could have contained an explicit provision on the equalization of children born in marriage and out of wedlock.[13] The concept of the best interest of the child, as a guiding principle and fundamental postulate on which the Convention is based, is mentioned only in one place in the Constitution – in Article 65, which foresees the possibility of limiting the rights of one or both parents when it is in the best interest of the child.

Article 6 6 of the Constitution also prescribes special protection for the family, mother, and single parent parents, and in this sense special protection is guaranteed for children who are not taken care of by their parents and

[12] In *Gaskin v. the United Kingdom* , it was held that the provision can also be understood to include knowing the identity of any person with whom they have a gestational or biological relationship, for example, as a result of assisted reproductive technologies or surrogacy (Gaskin v. the United Kingdom, 1989, para. 39). In this sense, the legal system of the USA recognizes anonymous donors, who have valid contracts with the institution where they donated biological material, which provides for anonymity clauses so that their identity can never be revealed. The American courts applied balance tests, and found that the interest of the birth and existence of the child, even at the cost of not revealing the identity of the donor of biological material, outweighs the interest of the child to know the identity of the parent. American courts, therefore, take the view that it is the lesser evil to preserve the anonymity of the donor, because without the guarantee of anonymity, it is quite possible, if not probable, that many donors would not donate biological material.

[13] Certainly, our legislator acted in accordance with this principle even before the adoption of the 2006 Constitution. Thus, the Family Law from 2005 contains a provision in Article 6, paragraph 4 according to which a child born out of wedlock has the same rights as a child born in marriage. Furthermore, the Inheritance Law of 1995 does not differentiate between children born in wedlock and children born out of wedlock in terms of inheritance. In this sense, it must be stated, the domestic legislator was progressive.

children with disabilities in mental and physical development . Protection of children from child labor is also foreseen, 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 – which is in accordance with Convention No. 138 on the minimum age for work of the International Labor Organization.

Although the Constitution does not recognize and does not refer to the basic principles of the Convention as such (Explanation, paragraph 2), but only mentions them sporadically and sparingly, we 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 that they are directly applied, and that, in accordance with the provisions of Article 18, paragraph 3 of the Constitution of the regulation on human and minority rights, they 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. Therefore, regardless of the failure of the constitution maker to incorporate the most important and many other provisions of international instruments guaranteeing the rights of the child, that failure had no practical consequences, since, through ratification, all those instruments are an integral part of the internal legal order and are directly applied.Also, Article 68 of the Constitution stipulates that children receive health care that is financed from public revenues, if they do not receive it on some other basis. By prescribing this constitutional provision, our country acted in accordance with the obligations contained in Article 24 of the Convention. Article 64, paragraph 5 of the Constitution stipulates that the rights of the child and their protection shall be regulated by law.

3.2. Draft Law on the Rights of the Child and the Ombudsman for the Rights of the Child

As it was pointed out, the drafter of the constitution predicted that the issue of children's rights and their protection would be regulated by law. Although it could be argued to the contrary, we believe that the provision of Article 64, paragraph 5 of the Constitution nominally obliges the legislator to enact a special law that will foresee and regulate children's rights and their protection, especially for the reason that an extremely small number of constitutional provisions are dedicated to children's rights. With that, we believe, the framer of the constitution provided a general framework

and a basis for further regulation of this issue, giving, at the same time, an instruction to the future legislator to regulate the issue of children's rights with a special (systemic) law (similar to the Explanation, p. 6). That is why the constitution maker prescribes a special legal basis for passing this law – Article 64, paragraph 5 of the Constitution – and not that this law be passed on the basis of the general legislative authority of the National Assembly from Article 99, paragraph 1, point 7 in connection with Article 97 of the Constitution. This is supported by the content of the Explanation (2019, p. 1), where Article 64, paragraph 5 of the Constitution is designated as the constitutional basis for the adoption of the Law on the Rights of the Child and the Ombudsman for the Rights of the Child. However, in contrast to this, the legislator failed to enact such a special law in the last 17 years. This certainly does not mean that children's rights are not provided for or protected by other laws and regulations,[14] but this was not done in a systematic, unique way; The absence of a kind of codification of children's rights, as provided for in Article 64, paragraph 5 of the Constitution, we believe, is a deficiency of the domestic legal order.However, in 2019, the Ministry of Labour, Employment, Veterans and Social Affairs drafted the Law on the Rights of the Child and the Ombudsman for the Rights of the Child (hereinafter: the Draft), which never entered the parliamentary procedure. Nevertheless, with the hope that this Draft will become a part of positive law at some point in the near future, it is necessary to point out several things related to this Draft at this point.[15]

As already mentioned, the constitutional basis for this draft is found in Article 64, paragraph 5 of the Constitution.[16] It is further stated that the Constitution does not expressly refer to the most important rights of the child, which have been declared as "basic principles", and that the right to

[14] In the Explanation (p. 5), it is stated that over 80 laws are relevant from the aspect of protection of children's rights.

[15] The Committee for the Rights of the Child, when considering the Initial Report of the Republic of Serbia on the implementation of the Convention on the Rights of the Child, in its Final Considerations as early as June 2008, suggested that Serbia adopt a comprehensive Law on Children and the Protector of the Rights of the Child – the Children's Ombudsman, which was repeated at subsequent meetings of the Committee as well as at the Third Periodic Review of the State of Human and Civil Rights in the Republic of Serbia in March 2018. By stating the recommendations, the Republic of Serbia accepted such recommendations and undertook to implement them. The recommendation of the same content was given in his annual report on the state of human rights in Serbia by the Commissioner for Human Rights of the Council of Europe, Tomas Hammarberg (October 2008). We hope that the day will come when these recommendations will be fulfilled.

[16] Although it is wrongly stated in the Explanation that it is about "Article 64, Clause 5" of the Constitution.

participation of children is not mentioned in the Constitution in general. Given that the basic principles of the Convention on the Rights of the Child have not been proclaimed as constitutional principles, and bearing in mind their importance and the fact that their realization is a condition for the realization of all other rights of the child, it is necessary that the future Law on the Rights of the Child and the Ombudsman for the Rights of the Child defines these principles and determines their content, as well as regulates the manner of their realization and an independent mechanism for their promotion, improvement and protection (Explanation, p. 1). It is not decided why 13 years were necessary from the adoption of the Constitution to the drafting of this Draft. The rationale further states that this law will contribute to the harmonization of the entire legal system related to children, because due to the fact that it will be the so-called the "umbrella" law is necessary to harmonize the existing legal solutions in all sectoral laws with the solutions contained in the Law on the Rights of the Child and the Protector of the Rights of the Child.

As decisive reasons for the adoption of this Law, it is pointed out that it is necessary in order to "*bridge the gaps in the system of children's rights, which are inevitable in the existing, fragmented approach"* and that *"in particular, it should be borne in mind that the currently established mechanism of promotion and control of the implementation rights of the child, through the institution of the Ombudsman of the Republic of Serbia, in which one Deputy deals with this area and the area of gender equality does not give the expected and desirable results.*" (Explanation, pp. 6-7). Given the fact that this Draft, nor any other, was neither adopted nor entered into the parliamentary procedure, it should be concluded that in the last 3 years things have drastically improved, and the gaps have been filled, so it is not necessary to enact this legislation.

The Draft Law itself was generally praised as a strong and correct step forward towards the comprehensive regulation of the issue of children's rights and their protection.[17] In many ways, the draft is similar to the UN Convention on the Rights of the Child itself, and with its 126 articles, it is one of the most comprehensive legal texts in the field of human rights, which is logical considering the fact that it is a codification. The draft essentially divides the rights of the child into seven chapters, and they are grouped according to the

[17] See the Report on the Public Debate on the Draft Law on the Rights of the Child and the Child Rights Defender; available at: https://www.minrzs.gov.rs/sites/default/files/2019-07/Deca%20%20Izvestaj%20Javna%20rasprava.pdf

type of rights themselves. A special chapter of the Draft consists of the rights of special groups of children and protection measures. Also, it is important to point out that Article 4 of the Draft, within the first chapter – Basic Provisions, following the provisions of the UN Convention on the Rights of the Child, defines the concept of a child as any human being from birth to the age of 18. This provision seeks to define a child at the universal level in the legal system of the Republic of Serbia.

The second chapter refers to the basic rights of the child, which contains all the basic principles from the sphere of children's rights: the right to non-discrimination (Article 11), the right to pursue the best interest (Article 12), the right to an opinion and respect for an opinion (Article 13; this is , in fact, the right to participation), the right to life (Article 14), the right to survival and development (Article 15), the right to a healthy environment (Article 16) and the right to dignity (Article 17). We believe that these provisions, in addition to establishing and proclaiming certain rights, should, in the spirit of the Convention, also serve as guiding principles when applying and interpreting other provisions of this Draft.

The third part of the Draft is dedicated to the civil and political rights of the child, so it includes the right to personal and family identity, the right to preserve identity, the right to privacy, the right to freedom of expression, the right to freedom of opinion, conscience and religion, the right to freedom of association and the right to access information.

The fourth part is dedicated to the child's right to protection from violence, so this regulates the prohibition of violence, the prohibition of torture (torture) and deprivation of liberty, special measures to protect children from violence, planning measures and preventive measures, training and raising public awareness, special protection measures child victims, prohibition of child trafficking, prohibition of exploitation of children for pornography and prostitution, protection of children from the use of narcotics, tobacco, alcohol and other psychoactive substances and from drug abuse, protection of children from participation in games of chance, protection of children from violence in printed material and the use of information and communication technologies (ICT), the right to protection from harmful information and the right to recovery and reintegration.

The fifth, sixth, seventh and eighth parts are devoted, essentially, to the social, cultural and economic rights of the child, and where they are included: the right to live in a family and maintain personal relationships with family members, obligations and responsibilities of parents, separation of the child from the parents, the child without parental care, the right to

health, the child's education about health, the child's participation in making decisions concerning his/her health, the child's right to information about his/her health, the child's right to independent consent to medical measures, the child's right to a standard of living, the right on social protection and access to social protection services, respect for the child's opinion in the social protection system, the right to education, obligations of public authorities in realizing the right to education, goals of education, respect for the child's opinion in the education system, the right to free time, play and rest and others.

Finally, the tenth and eleventh parts of the Draft are dedicated to the establishment and functioning and actions of the Ombudsman for Children's Rights, as an independent and independent state body that takes care of children's rights and monitors their realization.

So, as we can see, the systematization of the Draft largely corresponds to the Convention on the Rights of the Child, with the fact that the Draft has been supplemented with certain rights of the newer generation – such as the right to a healthy environment, the right to an (adequate) standard of living, and certain rights have been further elaborated – especially the child's right to protection from violence.By such prescription, ie. by adopting this Draft, a strong step forward would be made – by creating a codification on the rights of the child at the national level, which is rare among European countries. In addition, with the proposed quantity and quality of rights guaranteed by the Draft, Serbia would fully comply with international standards and assumed obligations, and would go a step further than that.

4. Conclusion

The normative activity of the international community in the field of prescribing, developing and protecting children's rights during the second half of the twentieth and twenty-first centuries was particularly intense, and they are at different levels, both universal and regional. Children's rights are comprehensively viewed through the prism of human rights and contemporary threats (Bjelajac, 2017), abuse and denial of children's rights in the context of child labor (Bjelajac, 2008a), and all in the spirit of humane development and the rule of law (Bjelajac, 2008b). The pinnacle of this normative activity is certainly embodied in the UN Convention on the Rights of the Child adopted in 1989. The convention codified the existing, but provided for and additionally expanded new rights of the child. This Convention, with extremely fast ratification by an extremely large number

of countries, will eventually become a kind of constitutional document of the modern civilized world. This Convention was supplemented by two optional protocols, as well as a number of other later instruments of both the United Nations and the Council of Europe, and it was built on the national level. On the other hand, there is no positive legal codification of children's rights, although the obligation to pass a special law in the sphere of children's rights and their protection is stipulated by the express provision of Article 64, paragraph 5 of the Constitution, and for which there is a real strong need, which, as we have seen, recognized by the public authority itself. However, despite this need and recognition, despite the constant recommendation of the UN Committee on the Rights of the Child, the public authorities have failed to enact a comprehensive law on children's rights and their protection for 17 years. Such an attitude of the domestic legislator cannot be justified or accepted. In addition, due to the omission of the constitution maker, the text of the Constitution itself does not explicitly contain any of the fundamental principles and basic postulates on which the UN Convention on the Rights of the Child and, indeed, the entire international legal system of children's rights are based. Although the protection of children's rights in the domestic system can be found and derived indirectly from a huge number of legal and other texts, we believe that this is not a satisfactory approach – especially since the very concept of a child is defined differently from regulation to regulation, which is also pointed out in the Explanation.The draft Law on the Rights of the Child and the Protection of the Rights of the Child was an imperfect but significant step forward towards solving this issue.

Speaking *of de lege ferenda* at the national level, only one thing can be emphasized – it is necessary, taking into account the basic principles and postulates of the Convention on the Rights of the Child and other international legal instruments, as well as the suggestions presented at public hearings, to pass a special law on the rights of the child – the Law on the Rights of the Child and Ombudsman for the rights of the child. The draft from 2019 represents a good starting point (which is not surprising, when it strongly leans and is based on the Convention on the Rights of the Child), and where certain changes and additions should be made. Let that be the first step forward.

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PRAVA DETETA – MEĐUNARODNI STANDARDI I NJIHOVA IMPLEMENTACIJA U PRAVNOM PORETKU REPUBLIKE SRBIJE

REZIME: Kao nužna posledica jačanja prava čoveka, javlja se ideja i pokret o postojanju prava deteta, odvojena od prava čoveka, prava koja će dete izdvojiti iz stiska vlasti ne samo države već i roditelja, te će omogućiti da se dete posmatra kao zasebno ljudsko biće, sa svojim pravima, svojim identitetom, integritetom i dignitetom. Ova ideja će se toliko raširiti do kraja dvadesetog veka da će dovesti do značajnih pojava i promena na međunarodnom nivou. Normativna aktivnost u okviru Ujedinjenih nacija nikada pre niti posle nije dala takav razultat kao što je dala Konvencija UN o pravima deteta. Gotovo univerzalo prihvaćen pravno obavezujući dokument, u izrazito kratkom vremenskom periodu, postavio je prilično visoke uniformne standarde prava deteta na globalnom nivou. Domaći zakonodavac, videćemo, nije u dovoljnoj meri ispratio tendencije međunarodne zajednice, da bi tek 2019. godine preduzeo određene političke korake kako bi ispravio datu situaciju, ali bez iskrene želje ili dovoljno snažne volje da postupak i okonča. Za razliku od univerzanog nivoa gde su prava deteta *de facto* kodifikovana u Konvenciju UN o pravima deteta, na nacionalnom nivou ona ostaju fragmentirana, sa mnogo praznina koje priznaje i domaća javna vlast.

Ključne reči: *prava deteta, međunarorni standardi, nacionalni standardi, Konvencija o pravima deteta, Nacrt Zakona o pravima deteta*.

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CURRENT PROBLEMS OF TRADEMARK EXHAUSTION IN FOREIGN COURT PRACTICE

ABSTRACT: The author analyzes the principle of trademark exhaustion in the European Union. The institution of trademark exhaustion is a form of legal limitation of the subjective right of the trademark owner. EU member states have a national trademark protection system. On the other hand, a supranational trademark protection system was established in the EU, through which, among other things, there was introduced a system of regional trademark exhaustion.

In the paper, the Institute of trademark exhaustion will be analyzed through the latest practice of the EU Court of Justice. Namely, when the owner of the trademark or a third party, with his consent, puts the goods marked with the trademark on the market in the European Economic Area, the exhaustion of the trademark occurs. This means that the owner of the trademark cannot prevent the further circulation of these goods. However, it often happens that the goods are purchased in one country, where the goods were first sold by the trademark owner, and then being sold in another country. According to the significant differences in the prices of medical and pharmaceutical products in different EU countries, there is a significant market for the so-called parallel import of such goods.

Recent case law of the Court of Justice of the European Union has clarified how the provisions relating to the packaging and repackaging of medicinal products should be interpreted and applied in the context of parallel trade in pharmaceutical products within the EU.

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1. Introduction

A trademark as an intellectual property right is of a monopolistic nature and the holder of the right has the exclusive right to use or exclude others from using the mark protected by the trademark. Any form of use of a trademarked sign without the permission of the trademark owner constitutes trademark infringement. However, strict application of this exclusive right of the trademark holder may lead to the commercialization of the monopoly position of the trademark owner. For this reason, there is a concept of trademark exhaustion that aims to mitigate the broad discretionary powers of trademark owners.

The exhaustion of intellectual property rights has been a controversial issue in theory and jurisprudence for decades (Plöckinger, 2002, pp. 3, 11). The legal treatment of the exhaustion of intellectual property rights is still an unresolved issue in international trade (Calboli, 2021, p. 32). In Serbian law, trademark exhaustion is regulated in Art. 53 of the Law on Trademarks. In terms of this regulation, the trademark holder does not have the right to control the further circulation of goods marked with a trademark that the trademark holder or a person authorized by him has put into circulation anywhere in the world. The legal and political reason for the principle of exhaustion of the trademark is that the holder of the trademark realizes economic value when the goods marked with the trademark are placed on the market for the first time.

However, the principle of exhaustion does not apply without limitation. Namely, defacement of the trademark is not valid "in the case of the existence of a justified reason for the holder of the trademark to oppose the further placing on the market of goods marked with the trademark, especially if there was a defect or other significant change in the condition of the goods after their first placing on the market". This rule aims to protect, first of all, the function of indicating the origin and the quality function of the trademark.

In the European Union (hereinafter: EU), the principle of exhaustion was regulated for the first time in Art. 7 of Directive 89/104, with the aim of overcoming differences in the national regulations of EU member states that hinder the free movement of goods and services. This Directive has been replaced by Directive 2008/95. Directive 2015/2436 is currently in force in the EU, which did not lead to any changes in terms of the substantive regulation of the trademark exhaustion principle. Namely, Art. 15 of Directive

2015/2436 corresponds in content to Art. 7 of the previously valid Directive 2008/95. In addition to Directive 2015/2436, Regulation 2017/1001 is also in force in the EU.

Trademark exhaustion can be divided into national, regional, and international exhaustion. This division was made according to the geographical extent of depletion (Jović, 2019, p. 159). The geographical scope of the exhaustion of the trademark is defined as the determination of the territory in which putting the goods into circulation results in the exhaustion of rights (Varga, 2015, p. 634). National exhaustion means that the owner of the trademark or a third party, with his consent, has put into circulation the goods marked with the trademark-protected sign in the country where the trademark is registered. The consequence of national exhaustion is that the owner of the trademark can prohibit the import of goods marked with a protected mark into the territory of validity of the trademark if the goods are first put into circulation outside the country where the trademark is registered. In other words, exhaustion is valid only in the territory of the country where the trademark was registered and where the goods were first put into circulation. International exhaustion, on the other hand, exists in the case when the owner of the trademark or a third party, with his consent, puts the goods marked with the trademark on the market anywhere in the world, including countries where the trademark in question is not registered. The consequence of international exhaustion is that the owner of the trademark cannot prohibit the import of goods into the territory of the country where the trademark is registered, which were put into circulation anywhere in the world by the owner of the trademark or a third party with his consent.

National trademark exhaustion benefits the trademark owner, while international trademark exhaustion benefits consumers. In the case of national exhaustion, the owner of the trademark can set different prices for the product depending on the country in which it is sold. In economically developed countries, the owner of the trademark will set a higher price for the product, and conversely, in less developed countries, he will set lower prices for his products. In the case of national exhaustion, the owner of the trademark has more freedom to decide whether to market its protected products in different countries or not (Calboli, 2002, pp. 48-49). In the case of international exhaustion of rights, the consumer can search for the best price between several suppliers of the same product. Once the product is sold anywhere in the world, consumers can take advantage of the price differences. It can be said that international exhaustion promotes the free movement of goods

in international trade more effectively than the national approach (Dobrin & Chochia, 2016, p. 29).

In our law, the principle of international exhaustion applies. This means that the owner of the trademark cannot prohibit a third party from importing into Serbia the goods marked with the trademark, which he or a third party with his consent has put into circulation anywhere in the world. The effect of international exhaustion is independent of the fact that the trademark owner does not enjoy adequate protection in the country where the goods were first put into circulation.

According to regional exhaustion, the rights of the trademark owner are exhausted throughout the region when the protected products are placed on the market in one member state of the region. Regional trademark exhaustion applies in the EU. When it comes to regional trademark exhaustion, it is fully harmonized within the EU to ensure the free movement of goods. Exhaustion applies to trademarks of EU member states (national trademarks) and EU trademarks. Trademark exhaustion occurs throughout the European Economic Area and the territorial scope of exhaustion cannot be extended by the national laws of an EU member state. Regulation 2017/1001 in Art. 15 prescribes that "an EU trademark shall not entitle the proprietor to prohibit its use in relation to goods which have been put on the market in the European Economic Area under that trademark by the proprietor or with his consent".

In any case, regardless of the form of exhaustion, if the trademark owner puts goods with the trademark on the market, the buyer of that product can freely decide whether to resell or even destroy the product (Sardina, 2011, pp. 1055, 1062).

2. Terms of trademark exhaustion

Trademark exhaustion always applies only to specific goods that are placed on the market with the consent of the trademark holder, and not generally to a specific class of goods. For example, the use of a trademarked sign on a loyalty card is exclusively reserved for the trademark holder and is not covered by the principle of exhaustion, because exhaustion applies only to goods that have been placed on the market with the consent of the trademark holder. Goods are understood to be all physical objects that are transferred across the border, which can have a monetary value and be the subject of commercial transactions. According to the practice of the EU Court of Justice, gas and electricity also fall under the concept of goods (Borchardt, 2020, p. 392). An additional condition for the principle of exhaustion is that the goods

are marked with a trademark protected by the trademark owner. It should be noted, however, that exhaustion cannot arise in relation to service. It follows from the text of national and supranational regulations on trademarks.

In order for the trademark to be exhausted, the goods must be placed on the market of the European Economic Area (EEA) by the trademark owner or by a third party, with the consent of the trademark owner. In case C-16/03, the Court of Justice of the EU took the position that goods marked with a trademark are not considered to have been placed on the market if the owner of the trademark imports the goods into the EEA with the aim of selling them there or only offers them in his business stores. In such a situation, the goods are not in the possession of a third party, that is, the third party cannot dispose of such goods. On the other hand, the trademark owner did not realize the economic value of the goods. This position was in accordance with Art. 5, paragraph 3 of the previously valid Directive 89/104 (now Article 10, Paragraph 3 of Directive 2015/2436).

Exhaustion of the trademark always occurs when the owner of the trademark or a person authorized by him puts into circulation the goods marked with the trademark, regardless of the provisions of the sales contract that limit or prohibit the resale of those goods (see the judgment of the Court of Justice of the EU in case C-16/03). This type of prohibition or restriction concerns the relationship between the contracting parties. The resale of goods that is performed contrary to the contract cannot be prohibited by reference to the exclusive right of the trademark owner. The placing on the market of goods marked with a trademark is attributed to the owner of the trademark even when the goods are first put on the market by the company within the concern that is the owner of the trademark.

Exhaustion of the trademark also occurs when the goods are put on the market by a third party with the consent of the owner of the trademark. The third party is the licensee or sales partner, especially those authorized to sell independently. The trademark owner's consent for placing the goods on the market is actually the will of the trademark owner to waive the right to control the first placing of the goods on the market. This will usually be the result of express consent. The EU Court of Justice left it to national courts to assess the conditions under which the trademark owner's conclusive consent to the placing of goods on the market by a third party leads to the exhaustion of the trademark.

The license agreement itself does not represent the trademark owner's unconditional and absolute consent to the marketing of goods marked with the trademark. Namely, Directive 2015/2436 in Art. 25, paragraph 2 Article 8 gives the trademark owner the right to oppose the use of the trademark by the licensee

who violates one of the clauses specified in Art. 25, paragraph 2 of the Directive. If the licensee puts into circulation goods marked with a protected trademark in violation of any of the above clauses, he acts without the consent of the owner of the trademark. In other words, trademark exhaustion does not occur in that case. Other violations of the contract by the licensee have only contractual effects and do not affect the existence of the trademark owner's consent.

The essential condition for the exhaustion of the trademark is that the permanent alienation of the goods marked with the protected mark occurred at the will of the owner of the trademark or a person authorized by him to do so. In practice, the authorization to market products marked with a trademark is usually granted through a license agreement. This assignment may be temporally and territorially limited. The possibility of territorial limitation is essential for understanding the institution of trademark exhaustion, above all in countries that have opted for international trademark exhaustion. For example, if the owner of the trademark assigns to another the authorization to put the goods into circulation without territorial limitation, exhaustion occurs for the whole world, regardless of the country in which the goods were first put into circulation by the licensee. If, on the other hand, the owner of the trademark assigns to another the authorization to put the goods into circulation with a territorial limitation, e.g. for countries X, Y, and Z, then it occurs only for these three countries, regardless of which of them the goods were first put into circulation. This further means that exhaustion does not occur in any of these countries if the goods are first put into circulation outside their territory. Namely, in this case, the condition that the goods were placed on the market with the consent of the trademark owner was not met.

In connection with trademark exhaustion, cases in which the trademark owner has authorized a third party to place the trademark-protected sign on its products and to put such marked products on the market may be interesting. However, the licensee, contrary to the contract, produces and marks a larger quantity of goods than the contracted one (Wölfel, 1990, p. 17). Since in practice, it is difficult to distinguish between products that were (not) produced and sold in accordance with the contract, and since this way, the function of origin of the trademark is not violated, in this case, it is not possible to talk about trademark infringement, but about the violation of contractual obligations.

The exhaustion of the trademark occurs only in relation to those samples of goods that the owner of the trademark or a third party, with his consent, put into circulation for the first time on the market in the EEA. With regard to other examples of goods that have not been put on the market in the EEA

for the first time in this way, the owner of the trademark can still exercise its exclusive rights. In several cases, the EU Court of Justice has dealt with the question of whether the exhaustion rule applies to protected samples of goods (eg small perfume bottles and saws) that the owner gives to authorized sellers. In these cases, the Court held that if the trademark owner makes saws available for the purpose of demonstration and prohibits their sale, the goods cannot be considered to have been placed on the market (see e.g. the judgment of the Court of Justice of the EU in the case C-127/09 and C-324 /09).

In the Davidoff case (joined cases C-414/99 to C-416/99), the Court of Justice of the EU took the position that the third party is obliged to prove the existence of consent to the marketing of goods marked with a trademark. In other words, the owner of the trademark is not obliged to prove the absence of consent to placing the goods on the market.

3. Parallel importation of drugs and requirements for repackaging and labeling of packages

Following the principle of exhaustion of the trademark, the holder of the trademark cannot prohibit the further circulation of goods marked with the protected trademark, which were placed on the market in the EEA by the owner of the trademark or with their consent. Further traffic may include parallel import of goods, i.e. cases when goods marked with a trademark are bought in one country (where the goods were sold by the owner of the trademark) and then sold in another country. Given the significant differences in the prices of medical and pharmaceutical products in different EU countries, there is a significant market for parallel imports of these goods. However, if the owner has legitimate reasons for doing so, he can prevent further circulation of the goods, especially if the condition of the product changes or deteriorates after the first sale.

The concept of parallel imports is a growing phenomenon in today's globalized world (Dobrin & Chochia, 2016, p. 29). In the EU, it is common practice to buy products, especially medicines, in EU countries with lower prices and then resell them in EU countries with higher prices, such as Germany, Denmark, and Sweden. This so-called "parallel import" is in principle acceptable, as it contributes to competition within the EU. However, when importing, parallel importers must, in accordance with local regulations, label the medicines in the language of the EU country where they are offered for sale. Therefore, parallel importers must open the sealed outer original package to replace the information for the use of the drug. The opening of

the outer packaging is visible in most cases. In the EU, most prescription medicines and some non-prescription medicines must have a tamper-evident device on the outer packaging. An example of a device to prevent unauthorized opening is a seal that breaks when the outer packaging of a medicine is opened. Parallel importers generally offer medicines from the original manufacturers in their packaging, on which, in addition to their trademark, they also put the trademark of the original manufacturer. According to the established practice of the EU Court of Justice, repackaging and affixing of these trademarks by parallel importers constitutes trademark infringement. Only in exceptional cases, repackaging and putting someone else's trademark on the new package is allowed based on trademark regulations.

The issue of trademark exhaustion is directly related to the freedom of movement of goods within the EU market. The Treaty on the Functioning of the EU in Art. 36 allows for proportionate bans or restrictions on imports between EU member states that are justified on the basis of the protection of industrial and commercial property, provided that they do not constitute a means of arbitrary discrimination or a disguised restriction of trade between member states. In this connection, the question arose as to whether the reference to the trademark in cases of parallel import calls into question the free movement of goods within the EU. Over the years, a rich case law has been developed in connection with this issue. In particular, the Court of Justice of the EU had the opportunity in the cases of Hoffmann-La Roche (case C-102/77), Bristol-Myers Squibb – abbreviated: BMS (joined cases C-427/93, C-429/93 and C- 436/93), Upjohn (Case C-379/97) and Boehringer (Case C-348/04) deals with the parallel importation of pharmaceutical products first sold under a trademark.

In the BMS case, the Court laid down five cumulative requirements for the legitimate repackaging of rebranded pharmaceutical products. First, it must be proven that invoking the trademark holder's right would contribute to the artificial division of the market between Member States. This will be especially the case if the packaging differs in different territories to the extent that the importer has to repackage the product in order to market it. A parallel importer may replace the sign used by the trademark holder in the territory of export with a sign used in the territory of import only if it is objectively necessary. The second condition involves proving that repacking, ie. relabeling cannot affect the original condition of the product. The third condition is that the new packaging must clearly and comprehensibly indicate the repackaging company and the original manufacturer. The fourth condition is that repackaging cannot lead to damage to the reputation of the trademark.

The last condition obliges the importer to notify the owner of the trademark in advance about the repackaged sale, ie. relabeled product.

Therefore, according to the established judicial practice in the EU, the parallel importer of medicines can replace the original packaging only if it is considered objectively necessary for effective access to the market in the importing country (see, for example, the Ferring case, C-297/15). When making such an assessment, national courts must take into account the circumstances prevailing at the time the medicinal products were placed on the market in the importing country. It is important to note that the parallel importer bears the burden of proving that the replacement of the original packaging is objectively necessary.

Counterfeit medicines are a global problem that poses a significant health risk to patients and can also cause patients to lose confidence in the legal supply chain. The share of counterfeit medicines on the world market is often estimated at around ten percent. In the EU, monitoring and precautionary measures to combat falsified medicines have long been in place, for example, the Rapid Alert System. Efforts have recently been intensified by the introduction of special security features to protect against the counterfeiting of medicines. At the beginning of February 2019, new rules on medical products came into force. It is about Directive 2011/62 (the so-called Counterfeit Medicines Directive) and Regulation 2016/161 (collectively "Safety Rules"). The new rules require, among other things, that the packaging contains security features that allow control of the authenticity of the drug, identification of individual packages, as well as a device that allows checking whether the outer packaging has been tampered with. Specifically, the outer packaging or, if there is no outer packaging, the immediate packaging of the medicine must contain two main security measures: 1) a unique identifier, which enables "wholesale distributors and persons authorized or entitled to supply medicinal products to the public to verify the authenticity of the medicinal product, and identify individual packs"; 2) device against an unauthorized opening, which enables "verification of whether the outer packaging has been tampered with". Said safety features may not be removed or covered unless the manufacturing authorization holder confirms, before partial or total removal or covering of those safety features, that the medicine in question is authentic and has not been tampered with. If security features are removed or covered, they must be replaced with security features that are equivalent in terms of being able to verify authenticity and identification and provide evidence of tampering with the medical device.

As important as protection against counterfeit medicines is, the new anti-counterfeiting rules are in conflict with the free movement of goods within the EU. This conflict is particularly prevalent in the pharmaceutical sector, where there are significant differences in drug price levels between different member states. Referring to the new Safety Rules, parallel importers increasingly state the argument that now, as a main rule, it would be considered objectively necessary to replace the original packaging of medicines instead of a less intrusive measure. The Court of Justice of the EU had the opportunity to comment on this issue based on three separate requests from the national courts of Germany (cases C-147/20 and C-204/20) and Denmark (case C-224/20).

3.1. Case C-147/20

In this case, the plaintiff is the German pharmaceutical company Novartis Pharma, which is the owner of the European Union verbal trademarks Novartis and Votrient. In accordance with Regulation 2016/161, the outer packaging of drugs sold by Novartis Pharma is protected against the opening. The defendant is the company Abacus Medicine, which distributed the plaintiff's medicines from the Netherlands to Germany. Due to the requirements of Directive 2011/62/E, the defendant faced the problem that pharmaceutical packages equipped with anti-opening devices must be opened to replace the cartridge and supply new anti-opening devices, which is usually not possible without leaving a trace. Therefore, the defendant considers that he is obliged to repackage the parallel imported goods in new, undamaged folding boxes. In this regard, the Abacus company informed the Novartis company that it will repack the parallel imported medicines of the Novartis company and submit the packaging samples of the said medicines. On the contrary, the plaintiff considered that repackaging of the disputed medicines is not necessary, ie. that the defendant could fulfill the requirements prescribed in art. 47(a) and Art. 54 (a) of Directive 2001/83 by placing on the original outer packaging a barcode with a unique identifier from Art. 3, paragraph 2(a) of Regulation 2016/161, as well as self-adhesive stickers. Also, after placing the drug instructions in German in that package, a new anti-opening protection can be placed on the original package, which covers the traces of opening the original package.

The dispute eventually reached the Court of Justice of the EU. In its decision, the court clarified that the use of new packaging and re-labeling for repackaging the parallel imported medicines are in principle equally suitable measures for meeting safety features in accordance with Article 47(a) of Directive 2001/83. Under certain conditions, however, the parallel importer

can use the new folding boxes to distribute his drugs. First, this is the case if the anti-tampering device securing the outer packaging of that medicinal product cannot objectively be replaced by an equivalent device within the meaning of Article 47a(1) and (b) of Directive 2001/83 and thus would prevent the distribution of that medicinal product into its relabelled original packaging in the Member State of importation. secondly, the applicant argues that the new folding box can be used where there is an obstacle to effective access to the market of a Member State which could make repackaging necessary if there is such strong resistance to rebranded medicines in that market or a significant part of it, not a small part of consumers that an obstacle to effective access to the market must be assumed. Similarly, when a significant proportion of consumers in the importing Member State refuse to buy a medicinal product whose outer packaging shows visible signs of opening caused by the substitution, in accordance with Article 47a(1) of Directive 2001/83, of an existing tamper-proof device by an equivalent device.

3.2. Case C-204/20

In case C-204/20 the Court of Justice of the EU answered several questions raised by the Regional Court in Hamburg. The questions concerned the interaction between the trademark regulations and the new EU regulations on the protection against the falsification of medicines in the light of the free movement of goods in the EU. In this case, the plaintiff is the German pharmaceutical company Bayer, owner of the EU trademark Androcur for drugs. The defendant is a parallel importer, the Kohlpharma company, which sells medicines in Germany that it procures from other EU countries and imports them into Germany in parallel. At the beginning of 2019, the defendant informed the plaintiff that he would import the drug "Androcur 50 mg" from the Netherlands in a package of 50 tablets in order to sell it in a package of 50 and 100 tablets in Germany. In addition, the defendant informed the plaintiff that, according to German regulations, he had to put instructions for use in the German language in the packaging of the drug, as a result of which the tamper-proof device attached to the outer packaging of the drug was damaged. Consequently, it was necessary to replace the original packaging. However, the plaintiff objected to the proposed replacement, arguing that the use of new packaging would go beyond what is necessary to market the drug in Germany.

The defendant company Kohlpharma pointed out in its defense that according to the new European pharmaceutical regulations, repackaging

is no longer a milder, but a completely inappropriate procedure in the drug trade. Instead, overpacking is now not only allowed but even considered the norm. The defendant, therefore, considered that the principle of trademark exhaustion could be invoked. Therefore, the question arose whether it follows from the regulations on drugs that repackaging is preferable to relabeling the drug and whether the choice between the two situations is solely a matter for the parallel importer. In view of this, the Regional Court in Hamburg suspended the proceedings and initiated a preliminary ruling procedure before the Court of Justice of the EU.

The dispute in case C-204/20 shows that the practice of parallel importation continues to open up complex legal issues at the intersection of different areas of law, especially trademark and drug regulations. In its ruling, the court largely favored the owners of pharmaceutical trademarks. Namely, in its judgment, the Court clarified that in the case of parallel import, there is no legal priority for repackaging in relation to relabelling. At the same time, the Court considers that the repackaging of medicines represents a more serious encroachment on the rights of the trademark holder compared to the relabelling of the original packaging of medicines. The situation is different only if visible traces during relabeling create such strong resistance to the newly labeled drugs on the market of the importing country that they should be seen as an obstacle to real access to this market. This is a question of fact and will have to be examined in light of the circumstances of each individual case. Therefore, in the future, parallel importers will have to prove, based on specific facts and circumstances in the country of import, that repackaging is necessary because relabeling would meet with great resistance and represent an obstacle to access to the drug market of the country of import. In other words, there is no general assumption that pharmacies and patients will have a correspondingly high resistance to rebranded drugs.

3.3. Case C-224/20

In case 224/20 the Court of Justice of the EU answered several questions raised by the Danish Maritime and Commercial Court. Seven related cases related to parallel importation and repackaging of medicines were conducted before this court. The plaintiffs, in this case, were pharmaceutical companies (among others, Novartis, Ferring, Lundbeck, and Merck Sharp) that simultaneously own pharmaceutical trademarks for the drugs they manufacture and sell. On the other hand, the defendants are parallel importers, companies that sold medicines on the Danish market that the plaintiffs had previously

put on the market in other EU countries. Before placing the drugs on the Danish market, the parallel importers repackaged the drugs in the new outer packaging. On some new packages, parallel importers put the trademarked sign of the drug manufacturer, while on some packages that sign was replaced by the new name of the product. The parallel importers informed the owners of the pharmaceutical trademarks that the security stickers (anti-tamper devices) attached to the outer packaging of the drugs must be broken and the packaging replaced. The reasons for this were usually the need to subsequently put instructions on the use of the medicine in the Danish language in the packaging. Pharmaceutical companies objected to the proposed new packaging, arguing that the use of the new packaging went beyond what was necessary to market the drug in Denmark. Parallel importers justified the repackaging by saying that wholesalers and pharmacists were obliged to check whether the outer packaging had been opened without authorization. This can only be prevented by new outer packaging and its re-labeling.

In its judgment in case C-224/20, the Court of Justice of the EU also stated that national regulations cannot stipulate that, in parallel, medicines must always be repackaged in new packaging with relabeling and attaching new safety features. As in the previous two cases, the Court decided that the rules, which make an additional security seal and a unique barcode mandatory on all drug packages, were introduced to give patients greater certainty that counterfeit drugs cannot be placed in original packages. The judgments confirm that patient safety always comes first. And this judgment confirms that the parallel import of medicines is a consequence of the free movement of goods on the EU internal market. However, this freedom does not give parallel importers the right to insult the trademarks of the original drug manufacturers, that is, to call into question their position as guarantors of drug quality and patient safety.

4. Justifiable reasons for the trademark owner to oppose the further commercialization of the goods marked with the trademark

As previously pointed out, trademark exhaustion does not apply if the trademark owner has legitimate reasons to oppose the further commercialization of the goods marked with the trademark. These justified reasons are not exhaustively specified in the valid domestic and foreign regulations and are therefore subject to interpretation. Accordingly, these legitimate reasons were at the heart of a dispute before the Commercial Court

of Finland which led to an appeal before the Supreme Court of Finland and finally to the referral of the case to the Court of Justice of the EU on 9 March 2021 (Case C- 197/21). The dispute started in the Finnish market. The reason for the dispute was the production and sale of carbonation equipment by the SodaStream company. This equipment allows consumers to make sparkling water and flavored sodas from plain tap water. The SodaStream company sells carbonation equipment with a refillable carbon dioxide bottle. These bottles are also sold separately by the company. SodaStream is the owner of the EU trademarks "SODASTREAM" and "SODA-CLUB". These marks are on the label and are engraved on the aluminum part of these bottles. On the other hand, the Finnish company MySoda sells full carbon dioxide bottles that are compatible with both their and SodaStream carbonation equipment. After acquiring SodaStream bottles that consumers have returned empty through retailers, MySoda refills them with carbon dioxide. In addition, the company replaces the original labels on full bottles with its labels, leaving visible the SodaStream trademarked characters engraved on the bottle itself.

SodaStream filed a lawsuit alleging that MySoda infringed on the SODASTREAM and SODACLUB trademarks in Finland by advertising and selling pre-filled carbon dioxide bottles bearing said marks without the trademark owner's consent. The dispute eventually reached the Court of Justice of the EU.

In its decision, the Court of Justice of the EU referred several times to its earlier "Viking-Gas" decision in case C-46/10. This procedure was related to the filling of gas cylinders with liquid gas in composite cylinders. In legal terms, the difference between the two cases is that the customer had to purchase the composite cylinder separately from the liquid gas, so the cylinder was considered a separate product. However, in the judgment in case C-197/21, the Court considered that it is possible for the consumer to consider the carbon dioxide bottle as packaging. In a legal assessment, however, these are only individual aspects of all the circumstances of an individual case regarding the question of whether refilled bottles give a false impression of the economic connection between the trademark owner and the refilling company.

In its judgment, the Court of Justice of the EU confirmed that according to Article 15, para. 2 of Regulation 2017/1001, the trademark owner who has placed on the market goods bearing his trademark, which are intended to be reused and replenished several times, may take measures against the reseller who refills the goods and replaces the label with the original trademark with other marks, but leaves the original trademark visible in said goods and then markets those goods, provided that these new marks create a false impression

among consumers that there is an economic connection between the reseller and the owner of the mark. To assess this false impression, the "circumstances surrounding the reseller's activity" must be taken into account. These include the way in which bottles with the new label are presented to consumers, the conditions of sale, and the practices prevailing in the sector concerned. Also, the fact that consumers are used to having their bottles refilled by retailers who are not the owners of the trademark must also be taken into account. At the same time, the Court stated that there is a likelihood of confusion on the part of the consumer regarding the relationship between the companies Mysoda and Sodastream since the consumer does not have direct contact with the reseller. Both companies do not offer their bottles directly to consumers, ie. their products are only available in stores.

The ruling strengthens the rights of trademark owners, as it confirms their legitimate interest in protecting their trademark even after the first sale of goods in the EU. The ruling also provides important guidance on the circumstances in which a trademark owner can exercise these rights, particularly in cases involving goods that are intended to be used repeatedly. The ruling will also have implications for businesses operating in the circular economy, as it highlights the need for resellers of reused goods to pay attention not only to new product labels but also to distribution methods and terms of sale as a whole to ensure consumers are not misled. with regard to the origin of the goods.

The EU Court of Justice had the opportunity to deal with the limits of trademark exhaustion in case C-642/16. The case is related to the company Lohmann, which is the owner of the EU trademark "debrisoft" for sanitary preparations for medical purposes. The Austrian parallel importer Junek Europ-Vertrieb imported from Austria to Germany the original products of the trademark owner "debrisoft". The importer placed a label on the original packaging with the following information: the name of the company responsible for the import, its address, bar code, and central pharmaceutical number. The sticker was placed on the unprinted part of the box and did not obscure the trademark of the manufacturer. The parallel importer did not inform the manufacturer about the reimport of medical devices. The owner of the trademark considered that the parallel importer has no right to put an additional label on the original packaging of the product without his consent. In this regard, the German Federal Court initiated a preliminary decision procedure before the Court of Justice of the EU with the question of whether the principles developed by this Court for the parallel import of medicines, according to which prior information and the provision of a sample of the

packaging at the request of the trademark owner are a prerequisite for the exhaustion of the trademark, are applied without restrictions on the parallel import of medical devices.

In its ruling, the Court of Justice of the EU first recalled its practice of limiting trademark exhaustion and the permissibility of reselling repackaged medicines. According to that jurisprudence, the repackaging of products marked with a protected trademark, as well as their relabeling, fundamentally affects the function of marking the origin of the trademark. In the case of sensitive products, especially pharmaceuticals, the trademark owner may have legitimate reasons to prohibit further distribution of the pharmaceutical product. Such a limitation is allowed unless the so-called BMS conditions, which were discussed earlier in this paper.

Unlike the previously analyzed cases, in which the parallel importer opened the original package or used a new package to add instructions in the language of the country of import, in this case, the parallel importer only placed an additional small sticker on the unprinted part of the unopened original package. Placing such a label does not constitute repackaging in the sense of the previous cases and does not affect the guarantee of origin of the medical device bearing the trademarked mark. In this sense, the Court considered that the owner of the trademark has no legitimate reason to oppose the further distribution of the medical device in question. In other words, his right has been exhausted.

5. Conclusion

Parallel importation of goods marked with a trademark has again become relevant in foreign judicial practice. The Court of Justice of the EU recently issued three rulings that clarified the conditions for repackaging medicines for foreign imports. The main focus in these cases was whether the trademark owner had the right to oppose the repackaging of the drug by the parallel importer if the replacement of the tamper-evident device would leave visible marks on the drug package.

EU law gives the trademark owner the exclusive right to distribute goods bearing the trademark only until such goods are placed on the EEA market. After that, the owner of the trademark is prohibited from exercising its rights to distribution, i.e. sale of goods by third parties. However, there are limits to trademark exhaustion in the context of parallel imports (when products are purchased in one EU member state, sold by the trademark owner or with his consent, and later sold in another EU member state). The importer has the

right to repackage and relabel the original products only if the five so-called BMS conditions.

The circulation of pharmaceutical products in the EU is regulated by a series of specific regulations, which aim to ensure that such products are safe and that their circulation is controlled. The most important regulations in this regard are the Medicines Directive 2001/83, which was supplemented by the Counterfeit Medicines Directive 2011/62, and Regulation 2016/161. These regulations introduced additional requirements for the packaging of medicines. According to the latest regulations, the outer packaging, i.e. the immediate packaging of the medicine, must contain two main security measures: a unique identifier (such as a barcode, which confirms the origin and authenticity of the product), and a device against unauthorized opening (for example, a security seal that shows whether if the package is opened or changed).

Regulation 2016/161 was the trigger for the latest judgments of the Court of Justice of the EU. Namely, in recent years, some parallel importers have referred to Directive 2011/62 to justify the use of new packaging instead of new labeling of the original packaging. The EU Court of Justice had the opportunity to assess the necessity of repackaging medicines in three very similar cases, in a situation where the replacement of the anti-tampering device would leave visible traces. The position of the parallel importers was that visible and irreversible traces of opening the original package cast doubt on the integrity of the medicine. However, pharmaceutical companies, on the other hand, believed that importers could meet the requirements of pharmaceutical regulations by adding a new anti-tampering device that covers the traces of opening the original package. This indicates that this new security seal was placed during a legal repack.

In three separate rulings, the EU Court of Justice has made it clear that repackaging medicines are not mandatory. In the Court's opinion, the mere presence of traces on the outer packaging of the medicine opened by the parallel trader is not in itself sufficient to justify the replacement of this outer packaging. Therefore, parallel traders cannot just rely on the fact that their actions, which are conditioned by the local regulations of the importing country, leave traces on the outer packaging of the drug, which is why they have to completely repackage it. Exceptionally, repackaging is allowed when there is strong resistance from a significant part of consumers in the import market. However, the parallel importer must prove consumer resistance to over-labeled drugs.

From the analyzed judgments of the EU Court of Justice, it follows that EU member states cannot require parallel importers to repackage the parallel

medicine in a new package, instead of relabeling it. Recent decisions of the EU Court of Justice represent an attempt to maintain a balance between the principle of the free movement of goods within the EU and the rights of trademark owners. The analyzed judgments provide some guarantee to trademark holders that parallel importers are now not free to repackage drugs to meet the requirements of new pharmaceutical regulations aimed at protecting consumers. The rulings provide some clarity to parallel importers as to when they can and must repackage pharmaceutical products. However, it remains unclear under what conditions consumers will be deemed to have shown sufficient resistance to relabeled and resealed goods to allow repackaging.

In addition to the issue of parallel import of goods marked with a trademark, the Court of Justice of the EU had the opportunity to deal again with the conditions under which the owner of the trademark, who put his goods on the market and which are intended for reuse or replenishment, can oppose such a practice. In the Court's opinion, the trademark owner has a legitimate reason to oppose the further distribution of goods marked with his trademark, if the consumer gets a false impression of the existence of an economic relationship between the trademark owner and resellers. This is primarily the case when the reseller removes the trademark owner's label and sticks his own, but the original trademarked sign engraved on the goods still remains visible. The issue of misrepresentation as to the economic relationship between the trademark owner and resellers must be comprehensively assessed on the basis of the indications on the product and its relabelling, as well as on the distribution practices of the industry concerned and the degree of awareness of those practices among consumers. The decision on all this is made by the national court. In any case, the EU Court of Justice suggests that a consumer who goes directly to a seller who is not the owner of the original trademark to refill an empty bottle or exchange it for a filled bottle will more easily perceive that there is no connection between the seller and the owner of the trade mark.

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AKTUELNI PROBLEMI ISCRPLJENJA ŽIGA U STRANOJ SUDSKOJ PRAKSI

REZIME: Autor u radu analizira princip iscrpljenja žiga u Evropskoj uniji. Institut iscrpljenja žiga je oblik zakonskog ograničenja subjektivnog prava vlasnika žiga. Države članice EU imaju nacionalni sistem zaštite žiga. Sa druge strane, u EU je uspostavljen nadnacionalni sistem zaštite žiga, kojim je, između ostalog, uveden sistem regionalnog iscrpljenja žiga. Institut iscrpljenja žiga će u radu biti analiziran kroz najnoviju praksu Suda pravde EU. Naime, kada vlasnik žiga ili treće lice uz njegovu saglasnost stavi u promet robu obeleženu žigom na tržište u Evropskom ekonomskom prostoru, nastupa iscrpljenje žiga. To znači da vlasnik žiga ne može da spreči dalji promet te robe. Međutim, često se roba kupuje u jednoj zemlji, u kojoj je robu prvi put prodao vlasnik žiga, a zatim se prodaje u drugoj zemlji. S obzirom na značajne razlike u cenama medicinskih i farmaceutskih proizvoda u različitim zemljama EU, postoji značajno tržište za takozvani paralelni uvoz ove robe.
Nedavna sudska praksa Suda pravde Evropske unije je razjasnila kako treba tumačiti i primenjivati odredbe koje se odnose na pakovanje i prepakivanje medicinskih proizvoda u kontekstu paralelne trgovine farmaceutskim proizvodima unutar EU.

***Ključne reči**: žig, iscrpljenje, paralelni uvoz, prepakivanje.*

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CYBER SECURITY OF A CRITICAL INFRASTRUCTURE

ABSTRACT: A critical infrastructure consists of basic assets and facilities whose functioning has a significant impact on the society and economy of a country, as well as on its security. The life and work of the citizens of a country are largely dependent on a smooth operation of various energy, telecommunication, water and sewage facilities, as well as the network of hospitals and health institutions, transportation, etc. The safe functioning of these systems is a prerequisite for the existence and development of a social community in an area. Therefore, it is necessary to undertake all necessary activities to preserve a critical infrastructure both in reality and cyberspace. With the development of the Internet, there has been a transformation of people's work and life in the broadest sense, in such a way that it has become an indispensable part of everyday life of each of us. Together with the largest global network increasingly used as well as the various services people necessarily being relied on in the new reality the world encountered during the COVID-10 pandemic, there has been created a vast space attracting the malicious users. They act by using the known mechanisms of functioning communication networks and other information technologies, finding the system vulnerabilities and exploit them. In this paper, we will analyze the cyber security of a critical infrastructure, cyber attacks on a critical infrastructure and the measures needed to be taken to mitigate the consequences of cyber attacks.

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1. Introduction

For human society to form and remain in a certain area, man adapted the environment to himself with the need to use natural potential and resources, making his life and work easier and more comfortable. The role of infrastructure is multiple and with reason; some authors state that it is a materialized condition for the existence and development of basic human activities in an organized space (Žegarac, 1998, p. 14). In geospace, two groups of networks of infrastructure systems are dominant: social and technical infrastructures. The social infrastructure consists of standard facilities in the domain of health, education, social care, culture, administration, etc. The technical and economic infrastructure consists of networks and facilities: traffic, water management, energy, communications, etc. Each infrastructure branch, or subsystem, with its facilities, network and devices, on the one hand, and organization and functioning, on the other hand, is part of a broader infrastructure system. These are systems of clear and clean connections, where all subsystems can be seen up to the end elements and pronounced vertical connections (Lukić, 2005, p. 5). We are talking about a complex system composed of a large number of other systems, spatially organized, and for that reason, we can consider it as a system of systems where interoperability is its very important characteristic.

Most of the mentioned systems should provide conditions for people's life and work in an area for an extended period of time. Problems in their functioning can produce negative consequences on many different levels: economic, health, security, etc. In modern society, critical infrastructure is managed with the support of information systems and technologies. Most companies that manage critical infrastructure and belong to the technical infrastructure base their IT solutions on many information systems, the main of which are the business information system and the process control system.

The ubiquity of the Internet makes it possible to connect anywhere and anytime, which leads to the increasing use of computers, mobile phones and any device that can connect to the network. This creates such a relationship in which modern society is critically dependent on information as a strategic resource and information and communication technologies, abbreviated ICT (Vesić et al., 2022, p. 91). Cybercriminals and specialized cyber groups find system vulnerabilities and carry out activities aimed not only at financial gain but also many other national, political and social goals through espionage, hacktivism, sabotage and even cyber warfare (Bjelajac & Jovanović, 2013, p. 104).

2. The concept of critical infrastructure

Critical infrastructure is an essential part of the entire infrastructure. If it is temporarily or permanently disabled, it will have far-reaching consequences because many infrastructural subsystems are connected to each other. In a way, it is necessary for the functioning of the economy and society. For example, suppose there is a power outage in an area where pumping stations are located. In that case, it is impossible to distribute water to the population located in a particular altitude zone because the pumping stations will not work. This can further result in an increase in certain diseases and a burden on the health infrastructure due to reduced hygiene. If there is an interruption in the functioning of the critical infrastructure, it will produce cascading effects towards the rest of the connecting infrastructure and disrupt it.

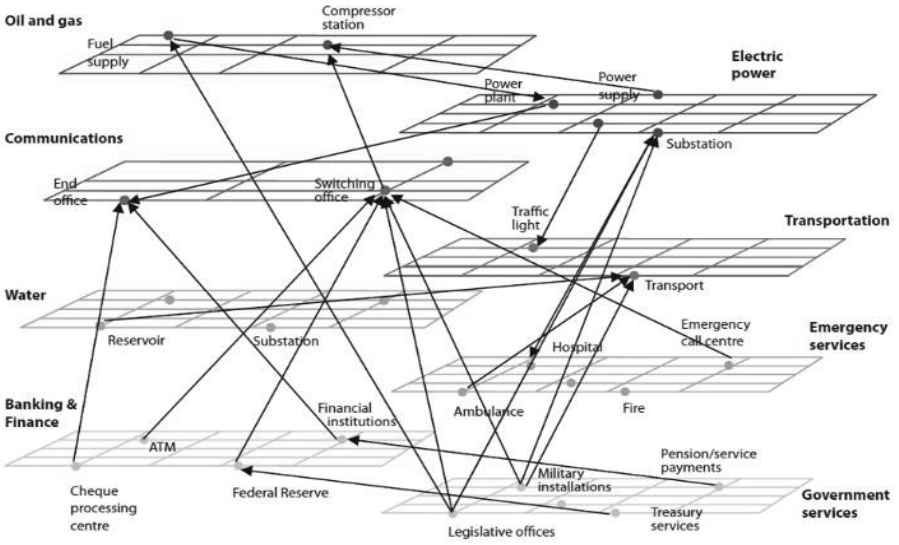
Certain authors state that the concept of critical infrastructure is not easy to define, that there is no widely accepted definition of critical infrastructure and that each country or organization must define its critical infrastructure (Trbojević, 2018, p. 103). For example, Australia defines this term as "those physical facilities, supply chains, information technologies and communication networks, which if destroyed, degraded or rendered unavailable for an extended period, would significantly impact the social or economic wellbeing of the nation, or affect Australia's ability to conduct national defence and ensure national security" (Australian Cyber and Infrastructure Security Centre, 2023). In Canada, critical infrastructure "refers to processes, systems, facilities, technologies, networks, assets and services essential to the health, safety, security or economic well-being of Canadians and the effective functioning of government. CI can be stand-alone or interconnected and interdependent within and across provinces, territories and national borders. Disruptions of CI could result in catastrophic loss of life, adverse economic effects, and significant harm to public confidence. CI includes both physical and digital infrastructure. Physical infrastructure refers to the built environment, including buildings, vehicles, computer hardware and other assets. Digital infrastructure refers to electronic systems and assets, like data and software" (Public Safety Canada, 2022, p. 22). NIST defines the term as "system and assets, whether physical or virtual, so vital to the U.S. that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters (NIST, 2022). The above definitions indicate that there is a difference in the treatment of the concept of criticality in critical infrastructure.

The authors point to two important aspects of critical infrastructure, which over time differentiated the newer definitions of this term (Milosavljević & Vučinić, 2021, pp. 43–44):

- dependency between subsystems – where one subsystem is critical for another if the other must continue working
- critical information infrastructure is a part of critical infrastructure – where if there is an interruption in the functioning of critical information infrastructure, there can be severe disruptions, even a disaster of critical infrastructure, but the failure of critical infrastructure can also occur for other reasons, while the failure of critical information infrastructure is most often a product of cyber attacks (García Zaballos & Jeun, 2016, p. 3)

Figure 1 shows the interdependence of critical infrastructure. If disruptions occur in one sector, it is transmitted to other related sectors through a ripple effect; thus, certain areas can remain completely paralyzed. Therefore, another important aspect of the infrastructure is its recovery.

Figure 1. Utility and network interdependencies



Source: OECD (OECD, n.d.)

Figure 1 shows the interdependence of critical infrastructure. If disruptions occur in one sector, it is transmitted to other related sectors through a ripple effect; thus, certain areas can remain completely paralyzed. Therefore, another important aspect of the infrastructure is its recovery.

For the successful management of critical infrastructure, a group of systems called industrial control systems (ICS) is used, which includes systems with supervisory control and data acquisition (SCADA), distributed control systems (DCS), as well as programmable logic controllers (PLC). They are used in power supply systems, water and sewage systems, oil and natural gas systems, as well as in chemical, pharmaceutical and discrete production, etc. (Stouffer et al., 2015, p. 1). With the development of the Internet, there is a need for a greater number of different types of information systems to be interoperable with each other and with other systems outside the company. ICS integrate with business information systems, and sometimes geographic information systems, to exchange business, industry, and geographic data and create better insights into business using advanced analytics and business intelligence technologies. In addition, there is a need to exchange data with other external systems to consolidate business and obtain better insights, which can be in real-time. As described, systems that are part of critical infrastructure attract various malicious users to conduct cyber operations. If implemented successfully, it can have catastrophic consequences at the national and regional levels, and therefore great attention is paid to the security of these systems.

3. Cyber security

Cyber security is quite a complex term, and there is some ambiguity in what it is due to a large number of definitions of similar terms, such as information security and ICT security. In this context, cyber security can be defined as the protection of cyberspace itself, electronic information, the ICT supporting the space and the users of cyberspace in their personal, social and national capacities, including any of their interests, measurable or immeasurable, that are vulnerable to attacks originating from cyberspace (Von Solms & Van Niekerk, 2013, p. 101). This definition differs from the terms information security and ICT security in that it includes threats not part of the formally defined scope of the other two types of security (Bjelajac & Vesić, 2020, p. 66). Suppose critical infrastructure is exposed to cyber-terrorist attacks. In that case, it is not only a violation of information security through violation of confidentiality, availability and integrity of information, or violation of authenticity, non-repudiation and reliability, but also prevents access to critical services of a country, such as, e.g. electrical network, which reduces the quality of life of its citizens, and in some cases causes lasting consequences for their lives.

Cyber attackers have easier access due to the huge number of individuals who are permanently present on the Internet and exhibit a disorder of addiction to

it (Bjelajac & Filipović, 2020). Individuals and specialized cyber groups appear as cyber attackers. The aforementioned cyber groups, better known as APT groups, are used to achieve various state interests, such as industrial espionage, theft of intellectual property and state secrets, cyber sabotage, destruction of equipment, etc. Their modus operandi is to carry out sophisticated, sustained cyberattacks, better known as Advanced Persistent Threats – APTs, through which a hacker infiltrates a network seamlessly to steal sensitive data over a long period (Crowdstrike, 2023). Compared to traditional attacks, APT attacks are characterized by the fact that: they have precisely defined targets and goals, they are highly organized and well-equipped attackers, they carry out long-term campaigns with repeated attempts, they use stealth and evasive attack techniques (Chen et al., 2014, p. 64). The cyber groups' activities are financed by certain groups or the governments of their countries to achieve their goals through cyber attacks.

4. Cyber security and critical infrastructure

The consequences for infrastructure and people, the long time required for system recovery and the large scale of damage that cyber attacks on critical infrastructure can cause are of concern to countries and organizations that manage them. The history of cyber attacks is characterized by financial losses, the ability to damage physical equipment, and the potential to cause human casualties (Alladi et al., 2020, p. 1). Therefore, it is necessary to pay special attention to the cyber security of critical infrastructure.

We will present some popular cyber-attacks that happened in the last two decades, and before the COVID-19 pandemic, they had a big impact. The first case is the attack on the Davis-Besse nuclear power plant in the city of Ohio in the USA in 2003 when the SQL Slammer worm broke into the private computer network of the nuclear power plant and disabled the security monitoring system for almost 5 hours (Holloway, 2015). Employees were unable to monitor the plant's core temperature sensors, a critical safety hazard at a nuclear power plant. This attack caused a severe incident and pointed to the importance of adequate network configuration and the need to place industrial control systems in a separate network with strict supervision of incoming and outgoing traffic.

Stuxnet is probably the most famous cyber attack, where damage is believed to have been done to Iran's nuclear program at a facility in the city of Natanz. It is a sophisticated malware that was transferred via USB memory into an environment isolated from the Internet and changed how the PLC

controllers that were part of the SCADA system worked. The aforementioned malicious program, knowing system vulnerabilities before the software manufacturer became aware of those vulnerabilities and made appropriate patches to eliminate them, the so-called "zero-day vulnerabilities" (Farwell & Rohozinski, 2011, p. 24), exploited those vulnerabilities. Stuxnet altered the operation of the PLC controllers that controlled the uranium centrifuges so that they rotated at irregular speeds. At the same time, it scrambled the data and presented it to the server as if everything was fine. Since no irregularity in operation was detected, the centrifuges were damaged. When talking about Stuxnet is often referred to as the first cyberweapon.

A cyber attack on a water supply with water treatment plants took place in 2015 in a city in the USA; where due to the sensitivity of the data, the incident was shown under the name KWC – Kemuri Water Company. The attackers concentrated on the weaknesses they found in the company's Web portal. They penetrated the Web payment portal through social engineering techniques such as phishing and SQL Injection attacks. They found credentials to access a SCADA system on an older IBM AS/400 platform there (Vericlave, 2018, p. 3). After that, they changed the level of chemicals used in the water purification process because they had access to different valves that control specific process inputs. There is partially available information about this cyber attack. However, from its scale, as well as the potential damage to the health of water consumers that was done and the fact that about 2.5 million consumer data was leaked, it can be said that it caused severe damage to the state and the lives of its citizens.

The attack on the electricity grid in Ukraine in 2015 was a large-scale attack that caused a power outage for about 225,000 consumers for several hours and prevented the distribution of electricity in the amount of about 73 MWh. The attack took place by taking control of the SCADA system, synergistically acting with a spear phishing attack and installing BlackEnergy 3 malware (Xiang et al., 2017, p. 157). This was followed by other attacks that maintained the intensity of this cyber operation and further compromised ICS operations. In addition to consumer data being stolen through the attack, much of the equipment was damaged during the attack (Alladi et al., 2020, pp. 4–5). After the attack and the significant damage, restoring the system and implementing the necessary measures to prevent the attack from happening again took time.

The COVID-19 pandemic has brought many changes to people's lives and work, called the new reality. In addition to the growth in online platforms for education, online pharmacies and eHealth services, many people have switched to working from home. Natural disasters and crises favour malicious users to launch a greater number of attacks, which also happened in the COVID-19 crisis, where

most of them were aimed at fraud with financial motives, and these were most often attacks aimed at individuals and certain financial organizations. A smaller number of attacks were directed at facilities and networks of critical infrastructure, but they also occurred primarily in the domain of healthcare institutions.

The authors (Pranggono & Arabo, 2021, p. 3) cite examples: data on research and patient tests related to COVID-19 were leaked due to a malware attack on a London-based research company, a DDoS attack was carried out on a network of hospitals in Paris that were on the COVID-19 system, a cybercriminal Netwalker forced a university researching a vaccine for COVID-19 to pay a $1.14 million ransom in a ransomware attack.

An analysis of cyber attacks on critical infrastructure in the period from January 2019 to May 2020 found that the most commonly reported attacks were: malware, about 37%; account hijacking, about 17% and targeted attacks, about 10%, with about 85% related to cybercrime and about 11% for cyber espionage, while 1% is cyber warfare (Alagappan et al., 2020, p. 1102). According to IBM's annual reports, the cost of an average data breach on an annual basis increased from 3.86 million dollars in 2020 to 4.24 million dollars in 2021 to 4.35 million in 2022, making it the highest in history. The same analysis shows that the healthcare sector has been the most vulnerable for 12 years, where data breach costs have increased from $7.13 million in 2020 to $9.23 million in 2021, which is about 30%. The trend continued in 2022, where data breach costs amounted to about 10.1 million, 41.6% compared to 2020 (IBM Security, 2021, 2022). All this indicates that the trend of cybercrime growth will continue, and thus the growth of cyberattacks on critical infrastructure.

5. Mitigating cyber attacks on critical infrastructure

Cyber security, as one of its goals, has the mitigation of cyber attacks on critical infrastructure. It is far more realistic to talk about mitigation than to talk about complete prevention because it is about previously researched and analyzed system weaknesses, then well-planned and organized targeted attacks, which are carried out much more often by specialized cyber groups with a clear intention and goal, than by curious individuals whom they work randomly. The measures that need to be taken largely depend on the specific case, but generally speaking, they should go in two mutually complementary directions. One of the measures is technical-technological, aiming to protect information and ICT infrastructure and services. The other part is aimed at the people and raising awareness of a possible cyber attack through specialized training (Stošić & Janković, 2022, p. 92).

Measures of a technical-technological nature include constantly updating security-related software, then periodically checking system vulnerabilities and penetration testing. It is also necessary to enable VPN services to establish an encrypted connection between the employee and the company's server. For greater security and assurance of authentication, it is necessary to implement multi-factor authentication through the scenario that is most suitable for the organization (e.g. code and code from an SMS message). Express the need to introduce a specific security standard, e.g. ISO 27001 and ISO 27002 or a cybersecurity framework such as the NIST CSF. Ensure the company complies with standards and security frameworks through its internal acts. Some authors state that it is very important in the context of cyber security for an organization or enterprise that manages critical infrastructure to use an intrusion detection system (IDS) and a security incident and event management system (SIEM) (Pranggono & Arabo, 2021, p. 5), because they enable timely response. In addition, it is necessary to regularly update the software of the equipment itself as well as the operating systems.

A large number of attacks begin with the placement of various social engineering techniques, so it is necessary to organize specialized training to raise users' awareness of cyber attacks and their level of information security culture. Many cases from practice have shown that even if technical security measures are in place, system vulnerabilities come from people themselves.

6. Conclusion

Critical infrastructure plays a very important role for a country and all individuals who live and work there, so special attention is paid to its security. A large part of that security is cyber security because critical infrastructure includes critical information infrastructure vulnerable to cyber attacks. Attacks are most often organized by specialized cyber groups, which primarily gain financial benefit from such actions because the state or organizations sponsor their activities. Their actions are aimed at national, political or other social goals through industrial espionage, sabotage, hacktivism or cyber warfare operations.

Critical infrastructure is characterized by high interdependence, so the risk of successful cyber attacks is much higher and can produce catastrophic consequences for human lives and the state. Therefore, it is important to act from the state level, towards the organization responsible for managing critical infrastructure, and then towards its employees to the greatest extent possible to mitigate the consequences of such attacks and, in some cases, even prevent them. This implies the joint action of technical-technological measures and measures aimed at the people themselves, i.e. permanent education.

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SAJBER BEZBEDNOST KRITIČNE INFRASTRUKTURE

REZIME: Kritičnu infrastrukturu čine osnovna sredstva i postrojenja čije funkcionisanje ima ogroman uticaj na društvo i ekonomiju jedne države, kao i na njenu bezbednost. Život i rad građana neke države u velikoj meri zavisi od nesmetanog rada raznih energetskih, telekomunikacionih, vodovodnih, kanalizacionih postrojenja, kao i mreže bolnica i zdravastvenih ustanova, prevoza itd. Bezbedno funkcionisanje ovih sistema je preduslov postojanja i razvoja društvene zajednice na nekom prostoru i stoga je potrebno preduzeti sve potrebne aktivnosti radi očuvanja kritične infrastrukture kako u realnosti, tako i u sajber prostoru. Razvojem interneta dolazi do tranformacije rada i života ljudi u najširem smislu na način da je on postao neizostavni deo svakodnevice svakoga od nas. Sa porastom upotrebe najveće globalne mreže, kao i u mnogome oslanjanje na razne servise koji su postali neophodni u novoj realnosti koje je svet zadesio tokom pandemije COVID-19, stvorio se ogroman prostor koji privlači zlonamerne korisnike. Oni deluju na način tako što koriste poznate mehanizme funkcionisanja komunikacionih mreža i drugih informacionih tehnologija, pronalaze ranjivosti sistema i vrše njihovu eksploataciju. U ovom radu analiziraćemo sajber bezbednost kritične infrastruktre, sajber napade na kritičnu infrastrukturu i mere koje je potrebno preduzeti u cilju ublažavanja posledica sajber napada.

Ključne reči: *bezbednost, sajber bezbednost, kritična infrastruktura, sajber napadi.*

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ETIOLOGY AND PHENOMENOLOGY OF VIOLENCE AGAINST CHILDREN[1]

ABSTRACT: The attitude of the society towards children is conditioned by its cultural, social, economic, and political aspects. However, violence against children is a historical phenomenon present in every society, regardless of its level of development. The responsibility lies with the state and society to enable and ensure the equality of children's rights with other members of the community and to protect children from violence, considering the fact that children cannot do this by themselves. Destructiveness of the consequences of violence against children indicates the necessity of a systematic fight against this phenomenon. The subject of this paper is to present the etiology of violence against children, i.e., the causes influencing the influx of violence against children, as well as the phenomenological aspect of this occurrence. In this context, this paper aims to indicate the causes, characteristics, and manifestations of violence against children through the presentation of empirical knowledge. The forms of violence against children overlap, but it is necessary to distinguish them in order to create more effective measures of their prevention and suppression.

Keywords: *children, violence, causes, phenomenology.*

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1. Introduction

Violence against children is a historical phenomenon that has taken on different forms and has been treated differently as society has developed. Today, violence against children is completely criminalized, but the development of technology, techniques, and society, in general, opens up the possibility for new forms of violence.

Due to their age, the physical and psychological state of children makes them particularly vulnerable to victimization by different forms of violence. Studies on the prevalence of violence against children, which included 96 countries, indicate that one billion children worldwide between the ages of 2 and 17 have experienced some form of violence (Hillis, Mercy, Amobi & Kress, 2016). Children are the most vulnerable and sensitive members of society, and violence has extremely destructive effects on their health, psychology, and social well-being. However, violence against children often remains unreported, concealed, and marginalized.

The level of concealment of this phenomenon is indicated by the prevalence estimate of violence against children based on a meta-analysis of global data, which shows that the number of sexually abused children is 30 times higher than the number of reports of this form of violence and that the number of physically abused children is 75 times higher than estimates in various reports by authorities (Stoltenborgh, Bakermans-Kranenburg, van Ijzendoorn & Alink, 2013, p. 82).

Understanding and analyzing empirical knowledge about the prevalence, causes, characteristics, and manifestations of violence against children is a prerequisite for creating effective measures to combat and prevent it.

2. Causes of Violence Against Children

Factors that contribute to the occurrence of violence against children are numerous and very complex. It is often a combination of several factors that lead to this phenomenon, and their complexity and prevalence make it difficult to combat and prevent.

Criminological literature often emphasizes the presence of victimizing factors that contribute to someone becoming a victim. In this sense, the most commonly cited factors are personal characteristics, such as personality traits, belonging to a certain social group, or circumstances that continuously expose a person to the risk of becoming a victim of a crime. The psychophysical

and emotional state of a child and their dependence on adults represent predispositions for the existence of this risk.

Determinants and factors that influence violence against children occur at different levels of society. At the macro level, these factors manifest as broader socio-economic, cultural, or institutional determinants that contribute to an increased risk of violence. These factors include economic underdevelopment or instability of the state and society, poverty, social conflicts, non-existent or inadequate legal regulation, lack of rule of law, etc. At the micro level, they manifest as socio-economic, cultural, or institutional factors specific to a particular local community or region, or factors related to a particular protection system such as the network of social welfare centers, primary healthcare institutions, educational systems, etc. When it comes to the micro level, factors related to the family appear, i.e., the socio-economic position of the family, dysfunctional relationships, domestic violence, drug and alcohol abuse, etc., or factors related to certain institutions that create a specific environment in which factors that increase the risk of violence are present. In addition to these factors, certain individual factors increase the risk of exposure to violence, such as gender, age, nationality, disability, or certain psychological personality traits (United Nations International Children's Emergency Fund [UNICEF], 2017, p. 11).

These factors can be viewed as risk factors at the individual level, at the level of close relationships, at the level of the community, and at the level of society. Risk factors at the individual level relate to biological and personal aspects of history such as gender, age, education, psychological development and disorders, presence of socio-pathological phenomena, and a history of abuse. Risk factors at the level of close relationships involve factors related to family and society, in terms of emotional disconnection from parents and their inadequate parenting, dysfunctional families, witnessing violence against another family member, and association with delinquent peers. At the community level, risk factors involve certain specificities of the environment in which a child spends a certain amount of time, such as school and neighborhood. In this context, poverty, high crime rates, high population density, low social cohesion, transitional processes, and the like can be classified as these factors. Risk factors at the level of society involve legal and social norms that justify, encourage, promote, and approve violence. These factors include policies of economic, social, gender, and other inequalities, ineffective social protection, social conflicts, natural disasters, war, absence of rule of law, and malfunction of state administration (World Health Organization, 2016, p. 16).

The most common causes of violence against children are related to individual and family factors, which interact with each other. At the

individual level, the causes can be grouped into demographic (social, biological, cognitive), affective, and behavioral characteristics. As for family factors, the causes that increase the risk of violence against children include economic resources, inappropriate living environment, the presence of social pathologies, frequent verbal and physical conflicts in the family, social isolation, and lack of family cohesion, as well as various forms of family dysfunctionality (Bjelajac & Merdović, 2019, p. 198).

Various studies have shown that growing up in a violent environment creates a predisposition for violent behavior in the future. Therefore, exposure to violence in childhood can be seen as a precursor of future violent behavior, both in relation to society and within the family and towards children (Stevković, 2007, p. 14).

An inadequate attitude of society towards violence against children, as well as violence in general, represents a particularly significant risk factor. Marginalizing violence against children, seeing this phenomenon as a private matter of the family and as an instrument of upbringing, as well as insufficient awareness of the consequences, create a basis for the expansion of violence against children, which has a destructive impact not only on the victim but also on society as a whole.

3. Types of Violence Against Children

When it comes to types of violence against children, various classifications can be found in the literature, but physical, sexual, psychological, emotional violence, neglect, and negligent treatment are mostly mentioned. Child exploitation is a specific type of violence, but it almost always involves some form of physical or psychological violence, depending on how it manifests.

Physical violence as a form of violence against children can be defined as the use of physical force against a child that involves injuring their health, bodily integrity, cohesion, and even their life. This form of violence is the easiest to detect because it has visible consequences such as bruises, scratches, cuts, fractures, etc., and it usually arises from the need to demonstrate power and control. The injuries sustained can cause permanent physical deformities and disabilities in the child, and research shows that continuous physical violence can lead to long-term consequences for the victim, such as mental retardation, blindness, and cerebral palsy, as well as various neurological disorders such as tics, stuttering, depression, sleep disorders, a tendency towards self-harm, etc. (Račić, 2016, p. 276).

Sexual violence, as well as sexual harassment, involve sexual intercourse with a child, forcing a child to engage in sexual intercourse under duress,

using force or threatening to abuse the position, trust, or authority the perpetrator has, pimping and mediating child prostitution, forcing a child to witness sexual acts, using a child to produce images, audio-visual and other materials of pornographic content, and sexual harassment, i.e. any verbal, nonverbal or physical behavior that violates the child's dignity in the sphere of sexual life. In this context, sexual violence also includes forcing a child to watch or touch other people's genitals, to show or touch their own genitals, to watch pornographic material together with the perpetrator, and sending the child messages, images, and audio-visual material with sexual content, and more. Sexual violence can be non-contact, non-penetrative, and penetrative. Victims of sexual violence often have visible injuries as physical indicators of the violence they have suffered, but emotional and social indicators are also noticeable, such as anger, fear of going to bed, depression, confusion, withdrawal, insomnia, very controlled behavior or hyperactivity, etc. (National Platform for the Prevention of Violence Involving Children, n.d.)

Psychological violence generally refers to behavior that endangers, underestimates, insults, or verbally attacks a child, or behavior that expresses negative emotions and deprives the child of emotional support. In this context, when it comes to the family environment, psychological violence manifests itself through emotional coldness, denial of love and attention, use of derogatory names and curses, belittling, prohibition of outings and socializing with peers, and the like (Mihić, 2002, p. 54).

Emotional abuse is the most difficult form of abuse to identify and prove compared to other forms of abuse, but it is the most widespread and usually occurs together with other forms of abuse. Emotional abuse is particularly difficult to identify because children develop emotional intelligence by learning from models and are not able to recognize emotional and psychological abuse, and society's attitude towards this form of violence is often such that it is not recognized or condemned (Milašinović & Andrić, 2021, p. 63).

The exploitation of children involves using a child for labor or other purposes and has a destructive effect on the child physically and mentally. Child exploitation includes the misuse of a child in child trafficking, prostitution, and pornography, using a child for begging, child labor, child trafficking for adoption, the misuse of a child for medical or scientific purposes, social exploitation of the child (misuse of the child in the media), and early, forced child marriage.

Neglect is a form of violence that involves neglecting a child's basic physical and psychological needs, which can lead to serious consequences for the child's health and development. Neglecting a child's basic needs arises from the failure of parents or caregivers to provide adequate living conditions,

such as food, shelter, and clothing, failure to protect the child from physical harm or danger, as well as failure to provide necessary medical care. Neglect also includes abandoning a child (Republic Institute for Social Protection, 2017, p. 23).

All forms of violence against children usually intertwine with each other, and besides differing in terms of manifestation, they can also differ depending on the environment in which they occur.

4. Types of Violence Against Children Depending on the Environment

4.1. Violence Against Children in the Family

The family has the most significant role in almost all aspects of a child's life. It directly affects the child's development, upbringing, and understanding of social circumstances and human relationships, and influences their actions in the future (Subotin & Odalović, 2016, p. 43). The family should be a zone of safety for children, however, in certain cases, the family represents the opposite. For many children, the family is the source of their most intense vulnerability. Considering the helplessness of the child and the relationship of dependence, trust, and emotional connection between children and parents, children are exposed to the risk of victimization by violence within the family environment. Research has shown that parents are the abusers of children in 95% of cases. In addition, studies show that in about 80-90% of cases, abusers are mature and responsible individuals, although it is a common belief that abuse is mainly carried out by mentally disturbed individuals (Milosavljević-Đukić & Tankosić, 2018, p. 67).

Violence in the family, especially violence against children, is reported far less than its actual occurrence. The reason for this situation lies in patriarchal understandings of family relationships, fear of retaliation from the perpetrator or other family members, fear of condemnation by society or friends and their lack of understanding, lack of trust in authorities, and more (Matijašević-Obradović & Stefanović, 2017, p.15).

Violence against children in the family can manifest itself directly or indirectly. If physical, sexual, or psychological violence or neglect of a child is being carried out, it is direct violence. Indirect violence against a child will occur if the child observes violence being carried out against another family member.

Regardless of whether they are witnesses or victims of violence, children are always victimized. Children become indirect victims of violence by being present during the violence, observing violence, or even listening to the

violence happening in the neighboring room. The consequences of indirect violence can be just as lasting and destructive as the consequences of direct violence and can manifest in adopting such behavior patterns or in aversion to family life (Milenković, 2015, p. 349).

Social stigmatization, fear of retaliation from the perpetrator for reporting, inefficiency, and unavailability of competent services, all contribute to the fact that the number of detected cases of violence against children in the family is significantly lower than the actual number. In this context, cases of sexual violence are particularly difficult to detect due to the sense of guilt and shame that the victim usually experiences. Therefore, it is of particular importance to raise awareness about recognizing signs of all forms of violence against children in the family and the importance of reporting it.

4.2. Violence Against Children Outside of the Family

Violence against children can occur not only within the family but also in any place where the child spends time. Although the majority of cases of violence against children occur within the family, it is noticeable that other forms of violence, such as peer violence and digital violence, are becoming increasingly common.

Violence in the community encompasses various forms of direct violence towards children by unknown or known individuals, as well as structural forms of violence manifested through social exclusion and discrimination. This type of violence includes all forms of violence that occur outside the family, i.e., outside the home, educational institutions, and other institutions, such as violence on the streets, sports fields, and other places where children spend time(Strategy for Prevention and Protection of Children from Violence for the period from 2020 to 2023).

Institutions of social protection such as homes for children without parental care, institutions for children and youth with disabilities, as well as correctional institutions for juvenile delinquents, can also be environments where there is a risk of violence against children due to the specific nature of their work. This is why competent authorities need to have control and continuous screening in order to detect any signs of violence.

Violence in educational institutions includes any violence that occurs in preschool institutions, primary or secondary schools, student dormitories, or during the organization of various activities by these institutions. The causes that contribute to the occurrence of violence by educators and other employees in educational institutions can be different, and personal dissatisfaction with

the system, personal family traumas, experienced violence, economic-social factors, etc. are often singled out (Račić, 2021, p. 273).

In schools, physical and psychological violence usually occurs, and often together. Violence perpetrated by teachers or other school employees can be sexual and gender-based violence and harassment. In addition, peer violence is very present in schools, which can also include physical and psychological, as well as sexual and gender-based violence and harassment, fights in the schoolyard, gang violence, etc. The development of technology has created a new form of violence that involves bullying through the use of the internet and mobile phones, i.e. digital violence, for which the term "cyberbullying" is used (Sérgio Pinheiro, 2006, p. 116).

There are numerous definitions of peer violence, but there is a general consensus that it involves any physical and psychological violence directed at children by their peers, with the goal of causing harm and typically repeated. Peer violence can vary in scope, severity, intensity, and duration, but it is distinct from peer abuse. Peer abuse represents a more serious form of peer violence that is repeated and lasts longer, and involves an imbalance of power. Physical violence, offensive words, offensive gestures, and malicious acts are classified as peer abuse if they are repeated and there is an imbalance of power. It is not considered peer violence if two children of approximately equal strength engage in a fight or teasing (Batic, 2013, p. 82).

Peer violence has strong consequences on the child who experiences violence, but also on the child who perpetrates it. Violent children tend to exhibit delinquent behavior as they grow up, while victims of violence face various psychosocial consequences such as depression and social anxiety.

Digital violence, or violence through the internet, involves sending messages, video content, photos, or invitations whose aim is to harm, disturb, or in any other way cause damage to a child, adolescent, or adult. This form of violence usually includes harassment, privacy attacks, stalking, insults, posting offensive comments, sending threatening messages, misuse of others' email addresses, social media profiles, etc. Recently, there has been an increasing number of videos of physical violence, primarily videos of peer violence, appearing on the internet, which are accompanied by numerous inappropriate comments that secondary victimize the victim of the violence (Sumonja & Skakavac, 2013, p. 238).

Considering that information and communication technologies have become an integral part of life, both for adults and children, the digital world has opened the door to numerous dangers and new forms of violence. Due to the specific characteristics of the environment in which it occurs, protecting children from this form of violence poses a special challenge.

5. Conclusion

Combating violence against children must be a priority for every state and society. The complexity of this phenomenon, its different manifestations, the difficulty of detecting it, and the seriousness of its consequences, all indicate that effective preventive action is necessary to prevent violence against children.

Due to all of the above and the scientifically proven connection between domestic violence and child abuse, scientific research is directed towards discovering risk factors and predicting child abuse and preventing domestic violence. The dependence, sensitivity and helplessness of children in relation to adults, their need for care and love, give space to the closest family members to abuse those needs and inflict consequences on children that will follow them throughout their lives and which, unfortunately, can never be completely eliminated (Merdović & Bjelajac, 2021). Physical violence is more visible compared to other forms of violence, but sometimes even it is not obvious. Given that in the majority of cases, the abusers of children are family members, it is necessary to raise the level of formal and informal education on recognizing signs of abuse so that competent authorities, as well as every individual, can adequately, efficiently, and timely react. However, special attention must also be paid to raising awareness of digital violence against children, considering the rapid development of technology, the time that children spend in the digital space, and the increasing occurrence of this form of violence.

Marginalizing violence against children carries extremely destructive consequences and leads to further complicating and escalating violence. The primary task is to protect children from every form of violence through decisive, timely, efficient, and coordinated action by relevant authorities. However, preventing further violence and partially eliminating its consequences will not be sufficient to combat this problem. It is necessary to pay special attention to preventive measures that should be created based on all etiological factors.

Therefore, violence against children is a complex social phenomenon, which is not just a single act of an individual towards a child, but a phenomenon that is conditioned by various socio-economic, cultural, or institutional factors, and its suppression can only be effectively addressed through a multi-sectoral approach of all relevant services and raising public awareness of its destructiveness.

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ETIOLOGIJA I FENOMENOLOGIJA NASILJA NAD DECOM

REZIME: Odnos društva prema deci uslovljen je njegovim kulturološkim, socijalnim, ekonomskim i političkim aspektom. Međutim, nasilje nad decom predstavlja istorijsku pojavu koja je prisutna u svakom društvu, bez obzira na njegov stepen razvijenosti. Odgovornost je na državi i društvu da omogući i osigura jednakost prava deteta sa ostalim članovima zajednice i da zaštiti decu od nasilja, imajući u vidu da sama deca ne mogu to da učine. Destruktivnost posledica nasilja nad decom ukazuje na neophodnost sistemske borbe protiv ove pojave. Predmet rada jeste prikaz etiologije nasilja nad decom, odnosno uzroka koji utiču na pojavu nasilja nad decom, kao i fenomenološkog aspekta ove pojave. U tom kontekstu, cilj rada jeste da se kroz prikaz empirijskih saznanja ukaže na uzroke, karakteristike i pojavne oblike nasilja nad decom. Pojavni oblici nasilja nad decom se međusobno prepliću, ali ih je neophodno razlikovati kako bi se kreirale efikasnije mere prevencije i suzbijanja.

***Ključne reči**: deca, nasilje, uzroci, fenomenologija.*

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CLIMATE CHANGES IN THE PRACTICE OF THE UN COMMITTEE ON THE RIGHTS OF A CHILD

ABSTRACT: Environmental degradation and climate changes have been the focus of the international community for decades. The impossibility of full and effective enjoyment of human rights caused by climate changes has been a constant reminder of the fact that an urgent reaction is required. However, what about the rights of those who depend on us and whose voices we have avoided hearing? What about the youngest among us, about whose future we selfishly and without any right decide? The latest research shows that children suffer more than adults from the consequences of climate changes. In the paper, the author highlights the lack of the child's rights protection by the UNCRC, violated by side effects of climate changes, and the dedication of the CRC to provide the protection of these rights through the General comment no. 26. Analyzing the process of creating the General comment no. 26 and its content, it was shown how the joint participation of both children and adults can lead to results giving hope for the future. Nonetheless, in concluding remarks the author expresses her doubt regarding the abidance of stipulated obligations for the States, because of the non-committal nature of the CRC's General comments, calling into question the significance of the General comment no. 26 itself.

Keywords: *climate changes, child's rights, the UNCRC, the CRC, General comment no. 26.*

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1. Introduction

Around 4.5 billion years ago, our home arose. The Earth. Home of poets, scientists, artists, and all other living beings. Over time it has changed and evolved, passing through so many different phases like the rest of her inhabitants. Some of those changes made her beautiful, as she is. And yet, some of them cause her to suffer, unable to resist them. Most of the time, they are a result of natural causes and evolution, a reminder that nature has its own will and pace. However, in the last few centuries, the human factor has been shown more devastating and dangerous, and with time passing by, humans, somehow, have forgotten they are not alone in this wonderful world.

Accelerated progress of the human race, initiated by the emergence and development of industrialization, led to the violation of the natural balance causing increasingly stronger climate changes (Kostić & Matijašević, 2020, p. 278). Today they represent one of the biggest risks to the planet's survival. In 2007 UNFCCC indicated that in the following decades, billions of people will be seriously affected by the consequences of climate change, which will be reflected in the shortage of basic human needs, such as food and water, as well as the deterioration of health conditions and quality of life (UNFCCC, 2007). Although all around the globe children suffer from different kinds of difficulties and misuse, climate change affects all of them, without no difference, since it is a global phenomenon with catastrophic side effects. As the youngest and the most vulnerable part of the human population, they are usually not aware of the circumstances around them and depend on the decisions that we make. Kofi Annan[1](2012) once said: "It is all our responsibility to ensure our children and grandchildren inherit a sustainable world". But, are we doing enough?

2. Climate change and child's rights

As the main world organization, United Nations recognized the importance of child protection and dedicated special attention to the youngest members of society. In this light, on November 20 of 1989, the United Nations adopted the Convention on the Rights of the Child (UNCRC), the treaty of human rights which is the one most commonly ratified at the universal level (Sanz-Caballero, 2013, p. 2). Since climate change is one of the biggest threats to life and the world as we know it with "the deep inequality in its causes and its impacts" (Sanson & Burke, 2019, p. 343), the enjoyment of human rights

[1] Secretary-General of the United Nations from 1997 to 2006.

is undeniably conditioned by this matter. In Sanz-Caballero's words (2013), "different climatic phenomena have different effects on different human rights that children should enjoy" (p. 2). So, does the UNCRC protect children from climate change, enabling them to enjoy the rights they are entitled to?

Being the core of civil society, children are entitled to some extra specific human rights proclaimed by the Convention, like the right to rest and leisure, the right to play, the right to be cared for by their parents, and many others. However, all of them suffer and cannot reach full and effective enjoyment because of the influence of climate change. In line with Article 3 (1) of the UNCRC, regarding proceedings of responsible bodies, "in all actions concerning children…the best interest of the child shall be a primary consideration". Nonetheless, the term "action" according to the General Comment No. 14[2] can be interpreted as a lack of action by the responsible bodies, which in this case can be related to climate inaction (Shields, 2021, pp. 18-19). According to Article 24 of the UNCRC, every child has a right to the highest attainable health standards and the States Parties of the Convention have a crucial role in its realization. To enable full implementation of this right, they should primarilycontribute to reducing disease and malnutrition, by providing clean drinking water and suitable nutritious food, in the first place. To do so, environmental pollution should be treated with special attention as it is a contributing factor that also leads to climate change. In achieving this goal, the Kyoto Protocol with its Doha Amendment should have been stable support, reducing the greenhouse gas concentration in the atmosphere, especially CO2 as the main anthropogenic greenhouse gas (Ebi & Paulson, 2007, p. 214), and mitigating the main cause of climate change. As a supporting pillar to these plans, the Paris Agreement from 2015 should contribute to reducing global warming by keeping temperatures "preferably to 1.5 degrees Celsius". Nonetheless, it seems that the plans and intentions of the State Parties of the three mentioned, and above all, the necessity for urgent change, in reality, does not correspond to the actual willingness of the most developed industrial countries, as the biggest polluters, for change. According to the latest data, global temperatures in 2022 were 1.6 degrees Celsius above the average, and the last nine years were the warmest years successively in the Earth's history (National Aeronautics and Space Administration [NASA], 2023).If no significant change is instituted and acted upon, it is predicted that between 2030 and 2050 around 250 000 additional deaths per year will

[2] General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) was adopted by the UN Committee on the Rights of the Children in 2013.

be caused by climate change (World Health Organization [WHO], 2021), and already today around 1 billion children feel its impact living in areas considered to be extremely high risked (United Nations International Children's Emergency Fund [UNICEF], 2021).

Among all of the climate and environmental hazards, it is the heatwaves, cyclones, flooding, water scarcity, vector-borne diseases, and air and lead pollution that is the most devastating to the human population. However, since children are more sensitive than adults, the consequences of these hazards and stresses are more disastrous to their young, fragile lives. For instance, high temperatures cause extreme heatwaves which result in serious health risks for children since they are not fully able to regulate their body temperature. Water scarcity is a direct consequence of climate change, disabling child's right to clean drinking water, and at the same time, causing a nutrition crisis with increasingly severe droughts and preventing children to enjoy one of their basic rights- the right to food (UNICEF, 2021).

Based on the above-mentioned it seems that the UNCRC "was not meant to protect children from the consequences of climate change" (Sanz-Caballero, 2013, p. 2).

3. Climate change in the practice of the UN Committee on the Rights of the Child

"For every child, hope… for every child, opportunity…for every child, dignity"[3] (UNICEF: History of a logo).

In accomplishing the mission of the UN in providing protection and security to children at the universal level, the Committee on the Rights of the Child (CRC) has the main role, of monitoring the implementation of the UNCRC by its State parties. Prior to 2021, the main focus of the CRC was the protection of children through the UNCRC and its Optional Protocols[4],

[3] Official logo of UNICEF since 2016.

[4] General Assembly of the UN adopted three Optional Protocols to the Convention on the Rights of the Child, which all together represent legal framework of the UN Committee of the Right of the Child and most important documents for the child rights protection.Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict were both adopted 25 May 2000 byResolution A/RES/54/263 at the fifty-fourth session of the General Assembly of the UN and entered into force 12 February 2002; Optional Protocol to the Convention on the Rights of the Child on a communications procedure was adopted 19 December 2011 by Resolution A/RES/66/138 at the sixty-sixth session of the General Assembly of the UN and entered into force 27 January 2012.

however, since the Convention has shown to be futile in the fight against the consequences of climate change, the CRC has become aware that an urgent and serious reaction is needed in this domain. The first step on this journey was the global conference held in 2016 by the UN which successfully, for the first time, linked children's rights with the environment at the international level (General Comment No. 26). Based on years of research and hard work, the CRC decided to draft the General Comment No. 26 in June 2021, which would dedicate special attention to the child's rights and the side effects of climate change and invited all State parties and stakeholders to comment on its concept note and later the draft itself. In the concept note, the CRC stated the disturbing consequences of environmental harm, including climate change, on human rights, ecosystems, and biodiversity, and pointed out the devastating fact that yearly around 1.5 million children under the age of 5 die from the side effects of the different environmental hazards (Committee on the Rights of the Child [CRC], 2021).

Based on the scope and objectives of the General Comment No. 26 presented in its concept note, 19 State parties, among them those which are the least polluting and the most affected by the side effects of climate change, submitted their comments indicating the drastic situation on their territory, suggesting different solutions to the subject matter and pointing out the necessity and different ways of including responsible bodies of the State parties in overcoming this alarming problem. Being aware that resolving this matter depends mostly on the opinion and actions of adults, the CRC decided to involve the global community, including State parties and experts from relevant fields in the creation of the General Comment No. 26. But, most importantly, it turned directly to those who suffer the most from neglecting the existence of this catastrophic global phenomenon- children.

The process of creating the General Comment No. 26 involves two phases followed by multiple and diverse consultations and workshops,entrusting the stakeholders from extremely high-risked areas, in particular children and young people, a key role in its drafting procedure. Since the CRC recognized the importance of children's voices, in the period from 31 March 2022 until 30 June 2022, 7.416 children from 103 countries contributed to the development of the first Draft General Comment No. 26 by sheering their opinions, thoughts, experiences, and feelings of environmental damage and climate change, including their right to environmental education, right to have a say and be taken seriously by adults and governments, and right to access information and support (Committee on the Rights of the Child [CRC], 2022a). Through their comments, the children expressed anger and dissatisfaction with the adults

they consider the main cause of the current situation, especially emphasizing the inability to enjoy their basic rights such as the right to education, the right to play, the right to breathe clean air, and the right to have access to clean drinking water. What certainly represents a surprising fact is that 15% of children who participated in the survey and live in environmentally high-risked areas, East and South-East Asia in particular, stated they do not feel the consequences of climate change (Committee on the Rights of the Child [CRC], 2022b). This represents a very devastating fact since those areas have been affected for decades by environmental hazards, and for those children and their short young lives this kind of living environment is perceived as "normal". In other words- they do not know for better.

As the realization of the aforementioned child's rights mostly depends on the adults, the CRC included the global community in the process of creating the General Comment No.26, as its inseparable part. Through 2021 and 2022, 110 participants from UN offices, States, and NGOs contributed with their participation in surveys and multiple workshops regarding the impact that environmental hazards have on children's lives. They mostly emphasized that climate change affects children more than adults, their physical and mental health in particular, caused by the environmental degradation and loss of safe and healthy outdoor spaces, and highlighted multiple problems and children risks this situation provokes, like necessary children migration, separation from their parents, lack of nutritious food, sexual exploitation, child trafficking, etc. (Committee on the Rights of the Child [CRC], 2022c). However, participants showed disagreement regarding multiple issues, among which are the obligations of States related to environmental concerns, intergenerational equity, and terminological clarification of the "appropriate protection"(CRC, 2022c).

Based on thorough work and long-term research, the CRC was able to form and publish the Draft General Comment No. 26 on children's rights and the environment with a special focus on climate change in 2022. It emphasizes the significance of the children's efforts in raising awareness of the importance of environmental and climate justice, as well as "historical contributions to human rights and environmental protection" (Committee on the Rights of the Child [CRC], 2022d). Through five thematic sections, special attention is dedicated to the specific rights of the UNCRC, due to their evident connection to the environment, the general obligations of States, the right to a clean, healthy, and sustainable environment, and climate change. The CRC categorically listed all child's rights enshrined in the UNCRC that are violated or cannot be enjoyed as a result of environmental hazards,

by giving a profound explanation of the environmental impacts which are causing the violation and recommending measures for States to prevent or reduce the consequences of it. Concerning the general obligations of States, they are aimed at ensuring a healthy and clean environment, separately or through international cooperation, which will lead to the full and effective enjoyment of all child's rights, as well as to enable access to necessary and full information regarding the environment, including the right to be heard, to express an opinion, or the right to an effective remedy caused by environmental issue (CRC, 2022d).

Since it can be seen with the accordance in abovementioned that the CRC highly values the opinions and comments of the versatile stakeholders regarding this matter, the Draft General Comment No. 26 is being evaluated by a global community, States, and especially children and young people before it is published as a General Comment in 2023.

4. Conclusion

Although the CRC dedicated so much time and effort to findpossible solutions to protect child's rights and their young lives from environmental hazards, the question is will the General Comment No. 26 alongside the UNCRC be powerful enough to meet set-up goals. As part of the general community in their comments of the Draft General Comment No. 26 pointed out, the General Comments passed by the CRC, are not binding for States, therefore it is questionablewhether the States will comply with the stipulated obligations and provide childrenwith a safe environment.All in all, adopting and publishing the General Comment No. 26 can be the first step to a better future. However, taking into consideration that it will take 7 years from the day that idea was born until its realization, as well as the intensity and drastic increase in the number ofendangered adults and children year after year, it is questionable if some new binding document will be timely adopted if the General Comment No. 26 alongside the UNCRC does not produce positive results.

We are part of nature, but we naively believe that we are above it. We only have one home, but we obviously do not appreciate it like we are supposed to. If we do not act today, it may not be worth it anymore.

Children are the future. So, how can the future be if our present is stealing time?

Children deserve to have a childhood. Children deserve to be loved and respected. Children deserve to be happy. Children deserve to have a future. Children deserve…

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KLIMATSKE PROMENE U PRAKSI KOMITETA UN ZA PRAVA DETETA

REZIME: Degradacija životne sredine i klimatske promene su decenijama u fokusu međunarodne zajednice. Nemogućnost potpunog i efikasnog uživanja ljudskih prava uzrokovana klimatskim promenama je stalni podsetnik da je neophodna hitna reakcija. Međutim, šta je sa pravima onima koji zavise od nas i čije glasove izbegavamo da čujemo? Šta je sa najmlađima među nama, o čijoj budućnosti mi sebično i bez ikakvog prava odlučujemo? Poslednja istraživanja pokazuju da deca više pate nego odrasli od posledica klimatskih promena. U radu, autor naglašava nedostatak zaštite prava deteta od strane Konvencije Ujedinjenih Nacija o pravima deteta, koja su povređena usled posledica klimatskih promena, i posvećenost Komiteta Ujedinjenih Nacija za prava deteta da obezbedi zaštitu ovih prava kroz Generalni komentar br. 26. Analizirajući proces stvaranja Generalnog Komentara br. 26 i njegov sadržaj, prikazano je kako zajedničko učešće dece i odraslih može da dovede do rezultata koji pružaju nadu za budućnost. Ipak, u zaključnim napomenama autor izražava sumnju u pogledu poštovanja propisanih obaveza od strane dražava članica, usled neobavezujuće prirode Generalnih komentara koje donosi Komitet Ujedinjenih Nacija za prava deteta, dovodeći u pitanje značaj Generalnog komentara br. 26.

Ključne reči: *klimatske promene, prava deteta, Konvencija Ujedinjenih Nacija o pravima deteta, Komitet Ujedinjenih Nacija za zaštitu prava deteta, Generalni komentar br. 26.*

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STRATEGIES RELEVANT FOR POSITIONING THE ORGANIZATION AS THE EMPLOYER OF A CHOICE – A CASE STUDY OF PWC

ABSTRACT: Research has demonstrated that a strong employer brand has a significant positive impact on the organization, including an influence on talent attraction and retention, gaining a competitive advantage by building a positive impact in public and enhancement of the employee engagement and consequently organizational performance. The purpose of this paper is to support organizations in developing a structural approach towards building an employer brand in order to attract, engage and retain the best employees and thus increase their performance. The paper will present the existing research regarding the employer branding strategies and via a case study analyse the practical implication these strategies have. A case study included a qualitative research done on PwC, a consulting and audit company operating on Serbian market. The study utilized the structured interviews in order to analyse the starting position of the organization, the challenges it was facing, and the desirable outcomes. The interviews also examined the strategies and actions taken to achieve these outcomes, as well as the results of the process. The results of the study demonstrated that the impact the strategies had was positive. But, what proved to be lacking was the structural approach towards the strategy implementation

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as well as clear measurements of the impact the strategies had on the overall organizational performance.

Keywords: *employer branding, branding strategy, organizational reputation, human resource management.*

1. Introduction

Being perceived as an employer of choice is critical for organizations because it can have a significant impact on their ability to attract and retain top talent (Sančanin, 2021). According to a study by the Society for Human Resource Management, organizations that are perceived as desirable places to work are more likely to attract job candidates who are highly qualified and motivated (Society for Human Resource Management [SHRM], 2018). This can help organizations build a strong and effective workforce, which can in turn lead to improved performance and competitiveness.

In addition to attracting top talent, being seen as an employer of choice can also help organizations build a positive reputation within their industry and among the general public. A strong employer brand can impact customer loyalty increase and positive reputationon the market (Dahling, Chau & Qi, 2017). This can be particularly important in today's highly competitive business environment, where organizations need to differentiate themselves in order to succeed.

Employer branding is the process of promoting an organization's reputation as a desirable place to work. This can be achieved through a variety of means, such as promoting the organization's culture and values, offering competitive benefits and perks, and highlighting opportunities for career growth and development (Siggelkow, 2002; Backhaus & Tikoo, 2004). By effectively promoting its employer brand, an organization can differentiate itself from its competitors and position itself as an employer of choice (Barjaktarović, 2022).

In conclusion, being seen as an employer of choice is important for organizations because it can help them attract and retain top talent, build a positive reputation, and differentiate themselves in the competitive job market. Employer branding is a key aspect of positioning an organization as an employer of choice, and there are multiple actions that can be taken to achieve it. This paper aims to review the existing research on employer branding and strategies for positioning an organization as a desirable employer, and provide examples of how these strategies can be applied in practice.

2. Factors influencing organization's attractiveness

There are various factors that contribute to an organization's attractiveness as an employer. These can include the organization's culture and values, benefits and perks, opportunities for career growth and development, and work-life balance (Dahlinget al., 2017). Research has also shown that an organization's reputation and image in the community can influence its attractiveness as an employer (Barjaktarović, 2022). Furthermore, challenging and meaningful tasks, as well as supportive management style, can enhance an organization's attractiveness as an employer (Cameron, Bright & Caza, 2016). Finally, organizations that effectively communicate their value proposition to potential employees can also increase their (Rounak & Misra, 2020; Ariyanto & Kustini, 2021).

Employer branding plays a significant role in attracting and retaining top talent. Research has shown that organizations with a strong employer brand are more likely to attract and retain top talent, leading to improved performance and competitiveness (Dahling et al., 2017; SHRM, 2018; Tanwar& Prasad, 2016).

Effective employer branding can also help organizations build a positive reputation in their industry and among the general public, which can further enhance their ability to attract and retain top talent (Lukić, Brkljač & Perčić, 2019; Gupta, Mittal & Mittal, 2019). However, it is important for organizations to consistently deliver on their employer brand promises in order to maintain their attractiveness as an employer and retain top talent (Carlini, Grace, France & Iacono, 2019).

Research has shown that employer branding can have a significant impact on employee engagement and performance. A strong employer brand can lead to increased employee satisfaction and commitment, leading to improved performance and retention (Dahling et al., 2017; SHRM, 2018). In addition, research has demonstrated that a positive employer brand can lead to increased customer loyalty and positive word-of-mouth promotion (Benraïss-Noailles & Viot, 2021), which can further enhance organizational performance.

On the other hand, a weak employer brand can lead to decreased employee engagement and performance, as well as increased turnover (Dahling et al., 2017). Therefore, it is important for organizations to effectively promote their employer brand and consistently deliver on their employer brand promises in order to enhance employee engagement and performance.

3. Strategies for positioning as a desirable employer

There are several strategies that organizations can use to position themselves as desirable employers. Some strategies include:

- Offering competitive compensation and benefits: Employees are more likely to be attracted to organizations that offer competitive salaries, benefits packages, and opportunities for career advancement (Edwards, 2010).
- Promoting a positive work culture: Organizations that have a positive work culture, where employees feel valued and supported, are more likely to attract and retain top talent (Linn, 2014; Tumasjan, Kunze, Bruch & Welpe, 2020).
- Providing professional development opportunities: Employees are often drawn to organizations that provide opportunities for professional growth and development. This could include trainings, mentorships, and the opportunity for new responsibilities and on the job learning (Wallace, Lings, Cameron & Sheldon, 2014).
- Communicating the company's values and mission: Employees are often attracted to organizations that align with their personal values and beliefs. By clearly communicating the company's mission and values, organizations can attract employees who are passionate about the work they do (Edwards, 2010).
- Building a strong employer brand: Organizations can establish themselves as desirable employers by building a strong employer brand that reflects their culture, values, and mission. This can be done through numerous marketing activities utilizing social media, adequate job postings, and using employee referrals (Sivertzen, Nilsen & Olafsen, 2013).

One example of an organization that has effectively positioned itself as an employer of choice is Google. Google is known for its innovative and collaborative culture, as well as its generous benefits and perks, such as on-site gym facilities, health insurance, and free meals (Google, 2021). In addition, Google offers a number of opportunities for career growth and development, including training and development programs and career advancement opportunities (Google, 2021). By promoting its culture and values, offering competitive benefits and perks, and highlighting opportunities for career growth, Google has effectively positioned itself as an employer of choice and attracted top talent from around the world (Mouton & Bussin, 2019).This article will review all these strategies on an example of a consulting company operating on Serbian market.

4. Case Study Description – PwC (PricewaterhouseCoopers)

PwC (PricewaterhouseCoopers) is a global professional services firm with headquarters in London, UK. The firm offers a wide range of services including audit and assurance, consulting, deals and forensics, and tax and legal services to clients in various industries including technology, financial services, consumer, and energy and utilities. PwC has a network of member firms in over 150 countries and employs over 250,000 people worldwide. In addition to its traditional services, PwC also focuses on emerging technologies such as artificial intelligence and blockchain and has a strong commitment to sustainability and corporate social responsibility (PwC, 2022).

PwC Serbia is a member firm of the PwC global network and is headquartered in Belgrade, Serbia. The firm offers a range of professional services including audit and assurance, consulting, tax and legal, and deals services to clients in various industries including financial services, telecommunications, and energy and utilities. PwC Serbia has a team of over 200 professionals who are committed to delivering high-quality services to their clients and helping them solve complex business challenges. In addition to its traditional services, PwC Serbia also focuses on emerging technologies and has a strong commitment to sustainability and corporate social responsibility (PwC Serbia, 2022).

5. Practical implication of implementation of strategies for positioning as a desirable employer

In order to gain a deeper understanding of the practical implications of strategies for positioning an organization as a desirable employer, a qualitative research study was conducted. The study utilized structured interviews to analyse the starting position of the organization, the challenges it was facing, and the desirable outcomes that were desired. The interviews also examined the strategies and actions taken to achieve these outcomes, as well as the results of the process. The interviews were conducted with HR representatives and internal focus groups that were specifically formed for the development and implementation of the employer brand strategy.

The interviews focused on two aspects – the process of strategy design (Fuertes et al., 2020), and the quality and effectiveness of the strategy that is in place. From the perspective of the strategy design (Gardašević & Radić, 2020) the following steps were discussed:

1. Analysis of the current state;

2. Setting goals and targets;
3. Strategies and actions;
4. Results.

From the strategy quality perspective, the following elements relevant for the development of an impactful employer branding strategy were discussed:

- Offering competitive compensation and benefits;
- Promoting a positive work culture;
- Providing professional development opportunities;
- Communicating the company's values and mission;
- Building a strong employer brand.

Analysis of the current state

The design of an employer branding strategy was initiated at the regional level and included participation from all territories within the region. To understand the strengths and weaknesses of the brand in each territory, a questionnaire was distributed to all territories. In addition to this structured analysis, the company also gathered empirical data from various sources, including employment fairs, candidates in the selection process, and internal employee satisfaction surveys. This information was used to identify key feedback from the market.

Results: In comparison to the direct competitors the company has a positive reputation and is perceived as a most desirable employer. The company is perceived as a organization with a steep learning curve and with wide learning opportunities. Nevertheless, in comparison to other competitors from similar industries the company is perceived as too formal, the work life balance is not appropriate, the selection process is perceived as complicated and long lasting, and it was noticed there is a discrepancy between global and local employer branding strategy. One of the key inputs was that the new generation of workforce is not motivated to apply for the entry level jobs as they perceived them as too operative and monotonous.

Setting goals and targets

The analysis conducted in the first stage resulted in a set of priorities that should be addressed:

- How to adjust business to suit the needs of the new generation workforce
- How to strengthen the local brand and its characteristics.

No clear goals were set nor KPIs (Key Performance Indicators) to track the strategy successfulness (Merkus, Willems & Veenswijk, 2019). Turnover and recruitment funnel was identified as a potential measuring tool though the goals were not set. The same applies to the social media channels and website engagements.

Strategies and actions

The priority was addressed with a strategy that should result in making the company more attractive for the new generation workforce by introducing Flexible internships – a new type of entry level positions. In comparisons to the standard entry level positions where the employee was trained to perform operative activities and learning curve took two years for the employee to move to a coordinator and controller roles, the new position was focused on a strong and structured learning experience where an employee would be able to gain the same skills that took previously two years in just three months. The challenge was that still the operative job had to be done. This was solved by introducing automatization solutions and share service centres that support the operative activities. Beside the steep learning curve flexible internships were also designed to be able to suit the people who are still studying, with the idea that even during their studies they get a professional experience within the company so after the graduation when moving to the full time employment they are already familiar with the operations from the company and are able to progress faster.

Actions targeting other aspects that support employer branding strategy:

Offering competitive compensation and benefits – The company is conducting a salary survey to benchmark the salaries in comparison to the market. The results of the survey are used to adjust the compensation packages. In accordance with empirical understanding of the market the benefits package is attractive and constantly improved to suit the market requirements.

Promoting a positive work culture – The company is focused on communicating the flexible and informal working environment. Flexibility is presented in flexible working hours, opportunity to work from home and an environment where the results are valued. Social medias and employment fairs are utilized to present the informal approach toward communication and a friendly working environment where individuals are respected and appreciated.

Providing professional development opportunities – The company is perceived as an organization with strong learning opportunities. Beside

learning on the job that is intensive there are opportunities to develop trough internal trainings and e-learnings.

Communicating the company's values and mission – The branding strategy is not strongly focused on communication company's mission and values. This is done trough internal communication.

Building a strong employer brand– The key communication channels include social media networks, website and employment fairs. The focus is on building positive working environment for employees to become positive promoters as well as external communication to the market. Employees are members of different professional organizations and conferences to position themselves and the company as the market experts.

Results

As there were no clear targets set it is difficult to assess the results of the strategies described above. The company perception is positive, and they are concluding that the strategies and working toward a more positive employer brand. During the process of the internal workforce planning a target was set that 15 people should be hired on flexible internship positions. In total 19 people received the offer and 17 accepted it.

6. Relevance of implementation of employer branding strategies

Employer branding is a crucial aspect of an organization, especially when the company is providing high-quality professional services. This is because workforce quality is one of the key elements in achieving organizational goals and targets (Schneider et al., 2018). Employer branding strategies and activities aim to improve employee satisfaction, align the organization with workforce needs, and communicate the company's brand to the wider market.

In terms of strategy design theory and practice, there is potential for further development of a more structured approach to strategy creation that includes clear goals and targets for tracking strategy execution (Fuertes et al., 2020). However, according to a company representative, this may be challenging due to the difficulty in measuring such activities and finding internal or external benchmarks for comparison, as both the internal and external environments are dynamic (Lin et al., 2020).

It is worth noting that the limitations of this study include the fact that the information was collected only from internal sources, although it does include external perspectives that the company has gathered. For future studies, it is recommended that external analysis is also conducted.

7. Conclusion

As the result of our research, being perceived as an employer of choice is a critical factor to the organizational success. This conclusion aligns with previous research conducted by Sančanin (2021), which found that an organization's reputation on the workforce market can significantly impact the quality and retention of its talent. In order to build and maintain a positive image on the labour market, the company in question has implemented various strategies and actions, including offering a supportive work-life balance, opportunities for growth and development, and a comprehensive compensation and benefits package (Dahling et al., 2017).

However, a question that remains is how to accurately measure and track the impact of these strategies on the organization's reputation and ultimately its results. It is important for the company to have a way to assess the effectiveness of these efforts to continually improve and attract top talent. Further research could be conducted to explore potential methods for measuring and tracking the impact of employer branding efforts on organizational success.

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STRATEGIJE ZA POZICIONIRANJE ORGANIZACIJE KAO POŽELJNOG POSLODAVCA – STUDIJA SLUČAJA PWC

REZIME: Istraživanja su pokazala da snažan brend poslodavca ima značajan pozitivan uticaj na organizaciju, uključujući uticaj na privlačenje i zadržavanje talenata, sticanje konkurentske prednosti izgradnjom pozitivnog uticaja u javnosti i povećanje angažovanja zaposlenih i posledično organizacionog učinka. Svrha ovog rada je da podrži organizacije u

razvoju strukturalnog pristupa ka izgradnji brenda poslodavca kako bi privukli, angažovali i zadržali najbolje zaposlene i shodno tome povećali organizacioni učinak. Rad će predstaviti postojeća istraživanja u vezi sa strategijama brendiranja poslodavaca i kroz studiju slučaja analizirati praktične implikacije koje ove strategije imaju. Studija slučaja je obuhvatila kvalitativno istraživanje konsultantske i revizorske kuće PwC-a, koja posluje na srpskom tržištu. Kroz studiju koriste se strukturirani intervjui kako bi se analizirala početna pozicija organizacije, izazovi sa kojima se suočava i željeni rezultati. Intervjui su takođe ispitali strategije i akcije preduzete da bi se postigli ovi ishodi, kao i rezultati procesa. Rezultati studije su pokazali da je uticaj strategija pozitivan, ono što se pokazalo nedostatkom jeste strukturalni pristup implementaciji strategije, kao i jasna merenja uticaja koje strategije imaju na ukupan organizacioni učinak.

Ključne reči: *brendiranje poslodavca, strategija brendiranja, reputacija organizacije, upravljanje ljudskim resursima.*

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INSURANCE FRAUD AS A FORM OF ECONOMIC CRIME AND THE METHODS FOR COMBATING IT

ABSTRACT: Dealing with the topic of economic crime in insurance is very complex and therefore challenging. One of the first challenges concerns the definition of economic crime. Namely, economic crime represents a multi-layered phenomenon which must, in terms of the definition of the basic features, be adapted to the specific requirements of a given society. One of the forms of economic crime, which is very common in practice, certainly refers to abuse in the field of insurance. The most common, and at the same time the only form of economic crime in the field of insurance foreseen by law, is insurance fraud. After the conceptual determination of economic crime as well as its basic features, this paper presents a review of the key issues related to the topic of the paper, which includes the phenomenological definition of insurance, the importance of the existence of insurance, insurance fraud as a form of economic crime, as well as the methods for combating it.

Keywords: *economic crime, insurance fraud, the Law on Insurance, the Criminal Code, Republic of Serbia.*

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1. Introduction

Economic crime as a specific group of criminal activities represents a significant threat to the development of society as a whole, not only its economic segment. The consequences of which are far-reaching. This problem is all the greater if it is viewed from the aspect of insurance being one of the crucial pillars of the functioning of the global financial system. Therefore, it is very important to show the forms of economic crime, from the field of insurance, and point out the consequences it can have in a broader, civilizational context. In addition, it is important to consider the ways and methods of opposing these criminal activities.

When talking about economic crime, there is one problem that should be pointed out at the very beginning. It is reflected in the fact that even today there is a great academic debate about what criminality actually represents. Some authors "define economic crime in a broader sense and define it as a set of economic crimes that represent an attack on the material existence of a person, while in a narrower sense they consider it to be any attack, that is, an offense against state intervention in the field of economy" (Banović, 2001, p. 6).

According to Stevanović and Cvetković (2019), "the theoretical concepts mainly differed in relation to the protective subject, the manner and extent of activities for the execution of certain acts that can be grouped around the concept of economic crime, then the consequences, but also other elements of criminal law that were taken as a starting point. point in defining the concept" (p. 48). Therefore, in domestic and foreign theory and practice, "there have been many attempts to define economic crime with one general definition, but the adoption of a single, general definition has never occurred. One of the reasons for the lack of uniformity in the scientific definition of the concept of economic crime is the great phenomenological diversity, conditioned by the diversity of cultural, economic, and legal aspects in different eras, within the areas of different countries and continents" (Carić & Matijašević Obradović, 2017, p. 23). At this point, Bošković (2009) points out that, "the content of the concept of economic crime is not static and it cannot be defined once and for all time, which is quite logical, considering the dynamism and adaptability of economic crime to newly emerging socio-economic and political relations, within which they find the conditions for their survival and development through new forms of appearance" (p. 13).

The modern definition given by Banović (2002) defines economic crime as, "a set of all tortious behaviors (actions or omissions) that arise in economic

relations and in connection with those relations, by legal and natural persons, who, as the subjects of those relations, have the appropriate powers towards the property on which those relations are based, and which tortious behavior directly damages that property and injures or endangers economic relations" (p. 28; Matijević & Marković, 2013, p. 391).

Commercial crime, especially contemporary, "can manifest itself in a large number of forms. The fact is that it strives for greater organization and the establishment of control over legal economic operations" (Tanjević, 2018, p. 260).

One of the most important features of economic crime is self-interest. In this sense, Škulić (2017) states that, "it is particularly important to consider this feature, given the fact that in most cases, torts in the field of economic crime are committed out of self-interest" (p. 70).

Another important feature is stealth. It is also called latent stealth. Banović (2017) states that it, "refers to the victim's lack of awareness that he has been harmed, and that the consequences are often not obvious to him" (p. 169). Stealth is especially present, "when perpetrators appear as officials or when they are in some way involved in the execution itself. This is a matter of so-called "actual immunity" of the perpetrator" (Stevanović, 2015, p. 304). In particular, this is the case "with large economic enterprises". Namely, very often such companies will not be sanctioned with an economic tort because they are of essential importance for the functioning of society. On the other hand, companies that employ few workers, have low revenues and are not crucial for the state's survival and functioning will very often be subjects of the repressive apparatus" (Stevanović & Cvetković, 2019, p. 50).

Before starting the analysis of insurance fraud as a form of economic crime, a brief overview of the phenomenological determination of insurance will be made.

2. Phenomenological determination of insurance

Insurance can be defined, "as a science that deals with the study of the effect of risk realization, its consequences, as well as the study of ways to prevent and reduce the possibility of risk occurrence." The primary function of insurance is to create a situation of security, both for individuals (natural persons) and for companies (legal entities). In its essence, insurance represents the association of all those who are exposed to the same dangers, with the aim of jointly bearing the economic consequences" (Ostojić, Lutovac & Matić, 2016, p. 48).

Insurance can also be defined as, "an economic activity that accumulates funds for the purpose of protecting people and things from the harmful consequences of extraordinary events, *i.e.*, eliminating the consequences of the occurrence of such events" (Ostojić, Lutovac & Matić, 2016, p. 48).

The concept of insurance "can be viewed from three points of view: economic; legal and technical. The economic point of view is expressed by the goal to be achieved. This refers to insurance tasks: indirect and direct protection of the insured, *i.e.*, his property as the primarily purpose, followed by development, the social role, and others. The legal point of view implies the regulation of numerous legal relationships that arise in insurance. This begins with the conclusion of the insurance relationship and ends with the final payment of compensation. The technical point of view refers to the regulation of the development of insurance if it is viewed as a mechanism for assessing the severity of risks. In addition, this refers to equalization in space and time, premium calculation, *etc.*, all with the use of the most modern statistical-mathematical and other methods" (Šulejić et al., 2006, p. 3).

In theory and practice, it is possible to make a division of insurance according to a large number of criteria. It is necessary to mention that not a single division is final. The reason for this lies in the fact that insurance is a changing category, as well as in the fact that very often new forms of insurance are created" (Bjelić, 2002, p. 136). However, some of the numerous criteria for insurance division are as follows: "subject of insurance (personal insurance and property insurance); method of determining coverage (insurance against all risks and insurance against specified risks); method of origination (voluntary and mandatory insurance); place of risk manifestation (land, sea and air insurance); number of insured persons (individual and joint insurance); the nature of the insured (insurance of legal entities and insurance of natural persons); degree of state intervention (social insurance and market insurance); method of risk equalization (insurance, reinsurance and market insurance); the origin of the need for damage compensation (damage and total insurance) and the type of insurance (life and non-life insurance)" (Spajić, 2019, pp. 53-54).

However, "very often the topic of discussion is the type of insurance, *i.e.*, division into life and non-life insurances. Some authors single out this criterion as the main one and call it the criterion of balancing insurance operations and determining business result" (Andrijanić & Klasić, 2002, p. 61).

According to the provisions of the Law on Insurance (2014), a division was made into life and non-life insurance. Article 8 stipulates that the types of life insurance are: "life insurance, marriage and birth insurance; annuity insurance; previous life insurance related to units of investment funds;

supplementary insurance with life insurance; tontine, which represents insurance in which the insured parties agree to jointly capitalize their contributions and divide the thus capitalized property between those insured persons who reach a certain age, *i.e.*, between the heirs of deceased insured persons; insurance with payment capitalization".

Article 9 defines the types of non-life insurance, which include: "accident insurance, voluntary health insurance, motor vehicle insurance, rail vehicle insurance, aircraft insurance, vessel insurance, goods in transit, property insurance against fire and other hazards, other property insurance, motor vehicle liability insurance, aircraft liability insurance, vessel liability insurance, damage general liability insurance, credit insurance, suretyship insurance, financial loss insurance, legal defense expenses insurance, travel assistance insurance".

3. The importance of having insurance

Insurance can have different effects on society, "through the manner of changing who bears the costs of losses and damage. On the one hand, it can increase fraud; on the other hand, it can help societies and individuals prepare for disasters and mitigate the effects of disasters on both households and societies" (Zweifel & Eisen, 2012, p. 268).

Broader social implications when talking about the importance of having insurance can be grouped into seven categories:

- providing safety and security (insurance provides coverage for sudden loss. For example, in case of life insurance, financial assistance is provided to the insured's family after his death);
- generating financial assets (insurance generates assets by collecting premiums. These funds are invested in government securities and shares. These funds are profitably used in the industrial development of a country to generate more funds and are used for the economic development of a country);
- life insurance encourages savings (insurance not only protects against risk and uncertainty, but also provides an investment channel);
- promotion of economic growth (insurance generates a significant impact on the economy by mobilizing domestic savings. Insurance turns accumulated capital into productive investments);
- medical support (medical insurance is one of the insurance policies that is adapted to different types of health risks. The insured receives medical support in case of a health insurance policy);

– risk distribution (insurance facilitates the spread of risk from the insured to the insurer. The basic principle of insurance is to spread the risk among a large number of people. A large number of people obtain insurance policies and pay a premium to the insurer. Whenever a loss occurs, it is compensated from the funds of the insurer);
– source of collective funds (large funds are collected by premium. Therefore, insurance has become an important source of capital formation)' (Chand, 2013).

4. Insurance fraud as a form of economic crime

Out of the group of criminal acts that make up economic crime, it is possible to single out only one that can be implemented and is implemented in the field of insurance. It is a matter of insurance fraud.

Insurance fraud is, "any act committed for the purpose of fraud during the insurance process itself." This happens when the claimant tries to obtain some benefit or advantage, to which he is not entitled, or when the insurer deliberately withholds a certain benefit. According to the Federal Bureau of Investigation (FBI), the most common fraud schemes include premium diversion, benefit collection, asset diversion, and workers' compensation fraud. Actors in these schemes can be: insurance company employees or claimants" (FBI, 2010). Another problem "are fraudulent insurance claims." They are filed with the intent to defraud the insurance provider. This type of fraud has existed as long as insurance has existed as a commercial business" (Manes, 1945, p. 39). In general, it can be concluded that false claim reporting is one of the most common forms of fraud (Dragojlović & Spaić, 2020, p. 490).

The main motivation for committing criminal acts, "committed in the field of insurance, is financial gain. In this sense, there is an equal possibility that these crimes will be committed by both the insurer and the insured" (Manes, 1945, p. 39). According to the Coalition Against Insurance Fraud, "the causes vary, but they usually center around greed and fraud protection failures. Those who commit insurance fraud often see it as a lucrative, low-risk venture. For example, drug dealers who get involved in insurance fraud view it as safer and more profitable than working on the streets. Compared to punishment for other crimes, court sentences for insurance fraud can be light, thereby reducing the deterrent effect of the sentence" (Coalition Against Insurance Fraud, 2016).

Another form of fraud is, "overinsurance, in which someone insures property for more than its real value" (Manes, 1945, p. 39). This allows the fraudster to make money by, "obtaining an insurance payout that is greater

than the value of the property. In addition, very common forms of insurance fraud are reframing an uninsured claim to make it an insured event and exaggerating the value of loss" (Burbach, 2016).

In practice, it is very difficult to evaluate profit obtained in this manner. In many cases, insurance fraud goes undetected.

One of the important facts that should be mentioned is associated with the very nature of insurance fraud. Namely, insurance fraud can be divided into serious and light fraud. Serious fraud is defined as a situation in which a person deliberately plans or invents a loss (*e.g.*, collision, car theft or fire) that was covered by an insurance policy, in order to gain ownership of the compensation. Sometimes it happens that criminal rings are involved in serious fraud schemes. In these situations, it is often possible to see multimillion-dollar thefts. Light fraud, which is much more common than serious fraud, is sometimes called opportunistic fraud. This type of fraud consists of policyholders exaggerating otherwise legitimate claims. For example, when involved in a car accident, the insured may demand more compensation than is actually necessary" (Viaene & Dedene, 2004, p. 315).

An important question is also who can commit insurance fraud. It should be emphasized here that there are insurance frauds committed by citizens, while it also happens that employees of insurance companies, intermediaries and other employees also commit fraud (Dragojlović, 2019, p. 677).

An analysis of our insurance companies' practice, "which deal with mandatory vehicle-liability insurance, shows that all fraud in this area can be grouped into two basic groups, namely: fraud that occurs when taking over the vehicle for insurance and fraud that occurs during liquidating and collecting damage" (Radović, Aleksić & Petrović, 2003, p. 247).

In case of fraud when taking over a vehicle for insurance, "there is a possibility that the insurance company's intermediaries, as well as the owners of motor vehicles, commit fraud." Fraud also often occurs during the signing of the insurance contract, when data on vehicles of a lower category are entered in the third copy of the policy, which is used for debt relief. Therefore, correct data is entered in the first two copies of the policy, while data from other vehicles, for which a lower premium is paid, is entered in the third copy. Fraud also occurs through policy falsification, which are only discovered if an accident occurs" (Radović, Aleksić & Petrović, 2003, p. 247). Fraud also occurs when, "at the time of taking the vehicle to the insurance company, the employee does not inspect the vehicle in detail, nor check the chassis and engine number." This fraud occurs with the help of insurance company employees" (Radović, Aleksić & Petrović, 2003, p. 247).

5. Countermeasures

Combating insurance fraud is directly dependent on prompt detection and response. In this sense, "fraud detection usually takes place in two steps." The first step is to identify suspicious claims that are more likely to indicate fraud. This can be done using computerized statistical analysis or recommendations from claims adjusters or insurance agents. In addition, the public may provide information to insurance companies and law enforcement authorities regarding suspected, observed, or recognized insurance fraud committed by others. Regardless of the source, the next step is to refer these claims to investigators for further analysis (Bolton & Hand, 2002, p. 238). Further analysis is usually statistical analysis. Statistical detection, "does not prove that certain claims are false, it merely identifies suspicious claims that must be investigated further" (Bolton & Hand, 2002, p. 238).

In principle, "fraudulent claims can appear in two types: a legitimate but hyperbolized story, or an exaggerated or false story in which the damage never actually occurred" (Lincoln, Wells & Petherick, 2003).

When an insurance company's fraud department investigates a fraudulent claim, "they often proceed according to two stages: pre-contact and post-contact. During the pre-contact phase, they analyze all available evidence before contacting the suspect. They can review submitted papers, contact third parties, and gather evidence from available sources. Then, during the 'contact' phase, they interview the suspect to gather more information and, ideally, obtain an incriminating statement" (Morley, Ball & Ormerod, 2006, p. 166).

In the Republic of Serbia, a significant part of preventive – repressive reactions to fraud that can be carried out in the field of insurance are provisions of criminal legislation that refer to the ways of sanctioning an already committed criminal offense, while also having a very significant preventive effect on the potential commission of future criminal offenses from this field. Namely, in the Criminal Code of the Republic of Serbia (2005), Article 223a defined the criminal offense of insurance fraud.

According to the provisions of the aforementioned article, "whoever, destroys, damages or hides the insured thing, with the intention of collecting the contracted amount from the insurance company, and then reports the damage, will be punished by imprisonment from three months to three years. The same penalty will be imposed on a person who causes himself such damage, injury, or health impairment, and then submits a claim to the insurance company, with the intention of collecting the agreed amount from the insurance company for

that physical damage, bodily injury or health impairment. If these acts result in property gain or damage that exceeds the amount of four hundred and fifty thousand dinars, the perpetrator will be sentenced from one to eight years in prison. If these acts result in property gain or damage that exceeds the amount of one million and five hundred thousand dinars, the perpetrator will be punished with imprisonment from two to ten years".

Insurance fraud defined in this manner, "represents a much narrower term, because it refers only to an insured thing which, in order to collect the insured sum from the insurance company, can be hidden, damaged or destroyed." It is not necessary to mislead the insurance company or to damage one's own property, or that of others, for its existence. In this sense, insurance fraud could mean the act of unlawfully demanding the insured sum from the insurer based on a false insurance policy certificate" (Spaić, 2019, p. 149).

The criminal offense of insurance fraud, "can be committed by any person who has an insurance policy against the object of an action, which can be an insured movable or immovable thing in the first basic form, and in the second form the object of the action is the body of the perpetrator. Although in the other form the object of the action is the perpetrator himself, he is not a passive entity, but rather that is an insurance company, or any other person whose activity is the performance of insurance activities" (Spaić, 2019, p. 149).

Considering that the existence of this criminal act does not require the occurrence of consequences, "it belongs to formal (active) criminal acts", this means that in order for this act to be considered complete, it is sufficient for any of the prescribed execution actions to be assumed and a request for collection of the insured sum to be filed. It is of no significance as to whether an insurance company made the compensation. Considering the sentence in its basic form, the attempt of this criminal offense is not punishable. If the perpetrator has not completed the act, there will be an incomplete attempt. A completed attempt is not possible, because by completing the criminal act activity, the criminal act is also completed" (Stojanović, 2017, p. 45).

As for the subjective element of the criminal offense of insurance fraud, "intent is necessary for the existence of a criminal offense, but in addition to intent, a certain intention is also required that could be assumed even if it was not specified in the legal description, because the motive and goal of the criminal offense is the collection of the insured amount from the insurance company, so assuming another act almost always means the existence of intention" (Spaić, 2019, p. 151).

5. Conclusion

Dealing with the topic of economic crime in insurance is very complex and therefore challenging. One of the first challenges lays in the definition of economic crime. Namely, economic crime is a multifaceted phenomenon that can be easily determined in principle. However, the problem arises when the political-social-economic patterns, characteristic of a country, get involved in that determination. Therefore, it is necessary to adapt the very concept of economic crime to the specific requirements of a given society.

Phenomenologically, economic crime is very diverse. One of the manifestations, very common in practice, is certainly abuses in the insurance field. The most common, and at the same time the only form of economic crime in the field of insurance foreseen by law, is insurance fraud.

This paper, after the conceptual determination of economic crime as well as its basic features, presented a review of the key issues related to the topic, which includes the phenomenological definition of insurance, the importance of the existence of insurance, insurance fraud as a form of economic crime, as well as methods for opposing the same.

Although its characteristics largely depend on the specifics of the form of the insurance subject, the common feature of all those characteristics is the fact that this type of fraud can be perpetrated by both the insured and the insurance company. The methods of confrontation also depend on the involved perpetrator. Thus, in case of an insured individual being the potential perpetrator, it can be said that the main method of opposition is embodied in preventive work. Via special bodies, services and departments, a detailed examination can be made in connection with the insured's claim for compensation so as to determine whether it is justified compensation or whether it is a question of fraud. In this way, by increasing the investigative capacity of insurance companies, they can significantly influence the incidence of fraud, which will consequently lead to a decrease in the rate of insurance fraud. On the other hand, if we are talking about an insurance company as a potential perpetrator, the matter is much more complex and mostly depends on the competent investigative bodies of the state or federal unit.

In addition, a good basis for opposition is a clear and unambiguous legal solution that will fully cover the essence of this matter.

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PREVARE U OSIGURANJU KAO OBLIK PRIVREDNOG KRIMINALITETA I METODE SUPROTSTAVLJANJA

REZIME: Obrada tematike privrednog kriminaliteta u osiguranju je veoma kompleksna i samim tim izazovna. Jedan od prvih izazova jeste u pojmovnom određenju privrednog kriminaliteta. Naime, privredni kriminalitet predstavlja jednu višeslojnu pojavu koja se u pojmovnom određenju i definisanju osnovnih obeležja, mora prilagoditi specifičnim zahtevima datog društva. Jedan od pojavnih oblika privrednog kriminaliteta, vrlo čest u praksi, svakako su zloupotrebe u oblasti osiguranja. Najčešći, ujedno i jedini zakonom predviđeni oblik privrednog kriminaliteta u oblasti osiguranja jesu prevare u osiguranju. U radu je, nakon pojmovnog određenja privrednog kriminaliteta, kao i njegovih osnovnih obeležja, učinjen osvrt na ključna pitanja u vezi sa temom rada, a koja uključuju fenomenološko određenje osiguranja, značaj postojanja osiguranja, prevare u osiguranju kao oblik privrednog kriminaliteta, kao i metode suprotstavljanja.

Ključne reči: *privredni kriminalitet, prevare u osiguranju, Zakon o osiguranju, Krivični zakonik, Republika Srbija.*

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CRIMINAL ANALYSIS OF THE OFFENSE – ABUSE IN THE PRIVATIZATION PROCESS

ABSTRACT: Compatibility with the standards of the European Union in terms of the criminal law regulation of all offenses that disrupt economic flows and values in a country, greatly affects, among the other things, the stability of economy as a basic social activity. The consequences of all individual criminal acts can have a very strong impact on certain aspects of economic relations. Comprehensive criminal regulation does a lot in the field of economic stability. Bearing in mind the topic of this paper, after a brief theoretical overview of the concept of privatization, the paper provides a criminological overview of the causes and forms of criminal behavior in the privatization process, as well as a criminal law analysis of the criminal act of Abuse in the privatization process. Abuse in the privatization process is a criminal offense regulated by the Article 228a of the Criminal Code of Republic of Serbia (2005), and it is classified in the twenty-second chapter entitled "Criminal offenses against economy". The criminal act of Abuse in the privatization process belongs to criminal acts violating the rules of legal business operations.

Keywords: *privatization, business operations, Privatization Law, the Criminal Code, criminal offense, Republic of Serbia.*

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1. Introduction

At the end of the twentieth century, "socialism as a social system and economic model ceased to be an alternative to the capitalist economic model. The main cause of its collapse was the inefficiency of the system and lack of motivation among workers. Although official statistics showed growth in economic activity that used to exceed the growth rates of developed market economies, it was not a healthy growth. It was not growth that creates, but the one that destroys enterprise value" (Cvijanović, Mihailović & Simonović, 2009, p. 7).

Privatization, in the sense of the Privatization Law (2014), is "the change of ownership of capital and property of legal entities operating with social and public capital. Privatization is also: the sale of shares, that is, stakes that were transferred and recorded in the Shareholders Register after the termination of the contracts that had been concluded in the privatization process; sale of property in companies where the contract on the sale of capital has been terminated; sale of shares, i.e. stakes of the Shareholder Fund, as well as the Fund for the Development of the Republic of Serbia and the Pension and Disability Insurance Fund of the Republic of Serbia".

Changes in "property relations structure have always had and continue to have a special significance" (Lakićević & Popović, 2022, p. 25). According to Šoškić (1995), "the primary goal of the transformation of social property was to achieve greater efficiency in economic activity" (p. 93). In the broadest sense, "privatization refers to the transfer of assets or capital from public (state) to private ownership, with the expectation of more efficient use of that property" (Zdravković, Nikolić, & Bradić-Martinović, 2010, p. 279; Radišić et al., 2010, p. 690).

According to Kecman Šušnjar (2012), "the development of the private sector in the economy is called the privatization process, which can be defined in a narrower and broader sense. Privatization, in Western literature, in its narrow sense, refers to the transfer of resources that were once in state ownership into the hands of the private sector. The state and social ownership structure was common and had far more forms in former socialist countries than in Western countries, so the task of returning companies to their original ownership structure is more demanding and characteristically different than in Western European countries, and for that reason, a broader definition of privatization must be introduced" (Estrin, 1994; cited in: Kecman Šušnjar, 2012, p. 18). The broader concept of privatization "encompasses ownership relations throughout the economy and explains privatization as the growth of the private sector

until private ownership becomes the dominant form of ownership at a certain point" (Kornai, 1991, p. 5). In a broader sense, "privatization means the sale of state or social property, but also the abandonment of any state control and the abolition of state monopolies in certain economic sectors, the return of unlawfully seized property to its rightful owners, the promotion of private enterprise and efforts to attract foreign investment" (Mayor, 1993, p. 10).

The privatization process "enabled the economy to acquire organizational forms that correspond to market operations, and thus created conditions for efficient business operations, as well as quality management and leadership" (Milosavljević & Milošević, 2019, p. 102). The basic and most important goal of privatization is "to create an efficient economy based on the dominance of private property, instead of an irrational one relying on inefficient social and state ownership" (Kecman Šušnjar, 2012, p. 18).

Given the long-standing essence and significance of the privatization process, it is not surprising that there are opportunities for numerous fraudulent activities in this field.

Banović (2002) notes that "the basic sources of criminal activity in privatization processes lie in the position of state officials who, to a greater or lesser extent, influence the process of changing ownership rights over certain property, and in this way, by selecting certain privileged individuals (or groups), provide themselves or them with significant financial means" (p. 116).

Considering the topic of the paper, the following subsections will provide a brief criminological overview of the causes and manifestations of criminal behavior in the privatization process, as well as a criminal-legal analysis of the criminal offense of Abuse in the Privatization Process.

2. Causes and forms of criminal behavior in the privatization process

When discussing the causes of criminal behavior in the privatization process, we should always start with the type and scope of the powers of state officials that enable them to influence the process of property transformation. According to Banović (2002), patterns of criminal behavior in the privatization process are also related to "the influence of bureaucracy in blocking the privatization process, leaving the possibility for privileged individuals and groups to illegally transfer capital from state and social enterprises to those under private ownership. Therefore, discretionary powers of bureaucracy are essential. Any segment of the privatization program that requires someone's official signature represents a potential hotspot for criminal activity. The

greater the discretionary powers of state officials and other officials who operationally implement the privatization process (and decide on property transfers), the greater their decision-making power, and therefore, the greater the possibilities for corruption and abuse" (pp. 116-117).

What can also lead to the emergence of various criminal behaviors in the process of property transformation "is the insufficient transparency, i.e. the inadequate availability of certain information about the privatization process to the wider public, frequent changes in regulations governing the field of privatization, as well as inadequate control of the privatization process that is being carried out" (Carić & Matijašević Obradović, 2017, p. 150).

According to Bošković (2009), "certain forms of economic crime in the field of property transformation can include the following activities:

- Private property owners can exploit the difficult economic situation and infiltrate their private capital into the social sector by securing strategic raw materials and supplies. Such privately directed funds lead to a situation where, in collusion with appropriate managers of social enterprises, they are valued as shareholder capital, which forms the basis for the privatization of social enterprises contrary to legal provisions. The value of such invested private capital (raw materials, supplies) is not commensurate with the value of social property that is illegally transformed into private property;
- Legal provisions require that a final account be prepared before the ownership transformation. Practice shows that in many cases this was not done, or that final accounts do not correspond to the actual factual situation, contain inaccurate information or even do not contain some information significant for the objective assessment of the value of social capital entering the transformation process. It is not uncommon for the value of the capital being transformed to be reduced, which clearly indicates a certain prior agreement and intention for the new owner to acquire property at a lower price."
- Various malpractices are possible in the assessment of capital value regarding what a realistic assessment encompasses, i.e., what the actual value of the transforming capital is.
- There are cases where social assets are reduced by accumulating liabilities, thereby inaccurately representing the value of that asset during sale, and certain individuals are given a privileged position by the management of the privatized company. The reduction of assets is usually carried out in one of the following ways: by not including the entire assets of the company during the assessment of its value;

by fictitiously increasing liabilities; by reducing the assets to a level where it prevents the free subscription of shares to individuals outside the company; by preventing share subscription in another way, such as not publishing advertisements, providing an incorrect address, not respecting priorities, not respecting working hours, and there are cases where certain individuals are allowed to subscribe to a greater number of shares than permitted or even individuals who do not have the right to subscribe to shares are allowed to do so.

– During the privatization process, there are instances of illegal activities conducted by certain interest groups who collude as different entities with the aim of influencing the competitive participants. It has also been observed that such groups exert pressure, intimidation, and even threats towards other entities involved in the transformation of social property (pp. 62-64).

3. Criminal law analysis of the criminal offense Abuse in the process of privatization

The criminal offense of Abuse in the process of privatization falls under "criminal offenses that violate the rules of lawful economic operations" (Mrvić Petrović, 2019, p. 226).

Abuse in the process of privatization is a criminal offense regulated by Article 228a of the Criminal Code of the Republic of Serbia (2005) and is classified in the twenty-second chapter entitled "Criminal Offenses against Economy".

According to the provisions of Article 228a, paragraph 1, the offense is committed by "a person who influences the course of the process or the decision of the organization competent for conducting the privatization process, by submitting an offer based on false information, or by unlawfully colluding with other participants in the privatization process, or by taking other unlawful actions". This is the basic form of the offense for which a prison sentence of six months to five years is prescribed.

As can be seen from the legal formulation of the basic form of the criminal offense, the act of commission can be carried out alternatively in the following ways: 1) submitting an offer based on false information, or 2) making agreements with other participants in the privatization process contrary to the law, or 3) taking other unlawful actions that affect the course of the privatization process or 4) making decisions of the organization in charge of implementing the privatization process.

This criminal offense and its act of commission "are somewhat of a blanket nature, so its legal description must be brought into relation with laws and other regulations, especially the Privatization Law (2014)" (Stojanović et al., 2017, p. 77).

The consequence of this form of criminal offense "is an impact on the course of the procedure or on the decision of the organization responsible for carrying out the privatization procedure. There must be a causal link between the action taken and the course of the procedure or the decision made. Attempting to commit the offense is possible and punishable given the prescribed penalty. The perpetrator of this form of offense may be a participant in the privatization procedure. A participant, according to the mentioned law, is a person who has submitted an application to participate in the privatization procedure" (Stojanović et al., 2017, p. 77).

The subjective element of this type of criminal offense is intent, which "must encompass both the action, i.e. the consciousness and will to submit an offer based on false information, or to unlawfully agree with other participants in the privatization process, or to undertake some other unlawful act, as well as the consequence" (Stojanović et al., 2017, p. 78).

It should be emphasized that "in addition to intent, what is also required is the perpetrator's intention to influence the course of the privatization process or the decision of the organization responsible for conducting the privatization process, which constitutes the consequence of the first basic form of the criminal offense of abuse in the privatization process" (Carić & Matijašević, 2017, p. 274).

The actus reus consists of committing the offense (submitting an offer based on false information, unlawfully agreeing with other participants in the privatization process, undertaking some other unlawful act).

According to Article 228a, paragraph 2, "a public official who violates the law or other regulations on privatization and thereby causes damage to capital or reduces the property that is the subject of privatization, by taking advantage of their position or authority, exceeding the limits of their authority, or failing to perform their duties, shall be punished with imprisonment for a term of six months to five years."

This is the second basic form of the offense, and the perpetrator can be a public official who alternatively commits the following acts: 1) violates the law or other regulations on privatization by taking advantage of their position or authority, 2) violates the law or other regulations on privatization by exceeding the limits of their authority, or 3) violates the law or other regulations on privatization by failing to perform their duties. The condition

that must be fulfilled in this regard is that these activities cause damage to capital or reduce the property that is the subject of privatization.

In accordance with Article 112, paragraph 1, item 3 of the Criminal Code (2005), a "public official" is considered to be: "1) a person who performs official duties in a state body; 2) an elected, appointed, or employed person in a state body or local self-government body, or a person who performs official duties or official functions in these bodies on a permanent or occasional basis; 3) a notary public, an enforcement agent, and an arbitrator, as well as a person in an institution, enterprise, or other entity who is entrusted with the exercise of public powers and who decides on the rights, obligations, or interests of natural or legal persons or on the public interest; 4) a person who is factually entrusted with the performance of certain official duties or tasks; 5) a military person."

For the completed criminal offense, "the occurrence of a consequence is necessary, i.e. damage to capital or a decrease in the value of property that is the subject of privatization. In this form, attempt is also possible and punishable" (Stojanović et al., 2017, p. 78).

For the existence of this form of criminal offense, "intent relating both to the action taken and to the consequence of the criminal offense is necessary" (Stojanović et al., 2017, p. 78).

According to Article 228a, paragraph 3, "if the offense from both previous paragraphs is committed in connection with the privatization of capital or property whose assessed value exceeds three hundred million dinars, the perpetrator shall be punished with imprisonment for one to ten years." Therefore, paragraph 3 regulates the most severe form of the criminal offense of Abuse in the Privatization Process.

In this case, the qualifying circumstance of the criminal offense is the assessed value of the capital or property subject to privatization. Therefore, the condition is that the assessed value of the capital or property subject to privatization exceeds three hundred million dinars.

The assessment of the value of capital or property "is carried out based on sublegal acts and must be done before the start of the privatization process because the initial price depends on it (it cannot be lower than half of the assessed value, and the new initial price in the second collection of bids cannot be lower than one-third of the assessed value)" (Stojanović et al., 2017, p. 78).

Article 85 of the Privatization Law (2014) stipulates a criminal offense that can only be committed by a responsible person in a privatization subject.

Namely, according to these provisions, "a responsible person in a privatization subject from Article 20 para. 1 and 3 of this Act who fails to provide data within the prescribed deadline, as well as a responsible person in

a privatization subject from Article 24 para. 4, Article 49 para. 1 and Article 57 para. 4 of this Act who provides false or incomplete data on the assets and obligations of the privatization subject to the Ministry responsible for economic affairs, or submits inaccurate or incomplete documentation, shall be punished with imprisonment from three months to five years and a fine ranging from 100,000 to 1,000,000 dinars."

According to Stojanović et al. (2017), "1) This criminal offense incriminates the failure to provide data within the prescribed deadline concerning the inventory and market value assessment of the total assets, liabilities, and capital of the subject of privatization in accordance with the law. The deadline is 30 days from the date of the public call for expressions of interest. The data is provided to the ministry responsible for economic affairs (Article 20, paragraph 1 of the Privatization Law). If 12 months have passed since the inventory and assessment, the privatization subject is obliged, upon request of that ministry, to provide a new inventory (Article 20, paragraph 3 of the Law); 2) The act of execution also includes providing the ministry with untrue or incomplete data on the assets and obligations of the subject of privatization (Article 49 of the Law) or providing inaccurate and incomplete documentation (Article 57 of the Law). Although the offense is blanket in nature, the act of execution is not precisely defined, even when brought into connection with the provisions of the Privatization Law referred to in Article 85. Among other things, it is not entirely clear whether there is a criminal offense in the case of failure to provide documentation from Articles 24, 49, and 57 of the Privatization Law; 3) The perpetrator of the criminal offense is the responsible person in the subject of privatization. The Privatization Law speaks of a person "authorized to represent the subject of privatization"; 4.) The criminal offense can only be committed with intent. Negligently failing to provide or providing inaccurate and incomplete documentation is not incriminated" (p. 201).

4. Conclusion

The globalization of markets and the internationalization of business operations have a significant impact on regional and national business practices, economic trends, and balances, as well as on competitive positions in the global markets of knowledge and capital.

Adequate coverage, continuity in development, and compatibility with European Union standards regarding criminal law regulations of all offenses that disrupt economic flows and values in a country, greatly influence, among other things, the stability of the economy as the fundamental social activity.

Analyzing the importance of criminal legislation in the field of economic crime, it can be concluded that adequate and timely criminal regulation with the economy and all its aspects as the primary protective object can act preventively against potential new criminal offenses against the economy, and thus be a significant factor in overall economic stability.

The consequences of all individual criminal offenses can strongly affect certain aspects of economic relations. Substantive criminal regulation seems to play a crucial role in economic stability.

Given the topic of the paper, after a brief theoretical overview of the concept of privatization, a criminological review was conducted in the paper on the causes and manifestations of criminal behavior in the privatization process, as well as a criminal law analysis of the criminal offense of Abuse of office in the privatization process.

Abuse in the privatization process is a criminal offense regulated by Article 228a of the Criminal Code of the Republic of Serbia (2005), and is classified in the twenty-second chapter entitled "Criminal offenses against the economy". The criminal offense of Abuse in the privatization process falls under criminal offenses that violate the rules of lawful economic transactions, and therefore it is necessary to be adequately prescribed in criminal legislation and applied in practice by the relevant judicial authorities.

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KRIVIČNOPRAVNA ANALIZA DELA – ZLOUPOTREBA U POSTUPKU PRIVATIZACIJE

REZIME: Kompatibilnost sa standardima Evropske unije u pogledu krivičnopravne regulative svih delikata kojima se narušavaju privredni tokovi i vrednosti u jednoj državi, u velikoj meri utiču, između ostalog, i na stabilnost privrede kao osnovne društvene delatnosti. Posledice svih pojedinačnih krivičnih dela mogu veoma snažno uticati na određene aspekte privrednih odnosa. Sadržajnom krivičnom regulativom, čini se

veoma mnogo na polju privredne stabilnosti. Imajući u vidu temu rada, nakon kraćeg teorijskog osvrta na koncept privatizacije, u radu je učinjen kriminološki osvrt na uzroke i pojavne oblike kriminalnih ponašanja u postupku privatizacije, kao i krivičnopravna analiza krivičnog dela zloupotreba u postupku privatizacije. Zloupotreba u postupku privatizacije je krivično delo uređeno članom 228a Krivičnog zakonika Republike Srbije (2005), i svrstano u dvadeset drugo poglavlje pod nazivom „Krivična dela protiv privrede". Krivično delo zloupotreba u postupku privatizacije spada u krivična dela kojima se krše pravila zakonitog privrednog poslovanja.

***Ključne reči**: privatizacija, privredno poslovanje, Zakon o privatizaciji, Krivični zakonik, krivično delo, Republika Srbija.*

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THE INSTRUCTION TO THE AUTHORS
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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.

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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.

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

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If the cited source has been written by one author:

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

There is an example:

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

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

There is an example:

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

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

There is an example:

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

If the cited source has been written by two authors:

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

There are some examples:

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

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

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

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

There is an example:

(Cvijanović, Matijašević Obradović & Škorić, 2017)

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

There is an example:

(Cvijanović et al., 2017)

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

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

There is an example:

(Savić et al., 2010)

If the author of the cited text is an organization:

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

There is an example:

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

further citations: (SASA, 2014)

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

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

There is an example:

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

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

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

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

If there exist two or more texts in one citation:

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

There is an example:

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

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

There is an example:

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

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

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

There is an example:

Published in *Politika* (2012)

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

If the personal correspondence is cited:

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

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

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

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

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

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

A note:

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

There is an example of a reference in a footnote:

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

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

If the laws and other regulations are cited:

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

There is an example:

(The Code of criminal procedure, 2011)

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

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

There is an example:

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

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

There is an example:

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

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

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

There is an example:

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

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

There is an example:

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

An important note:

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

The example:

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

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

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

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

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

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

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

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

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

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

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

References:

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

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