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CHATGPT – ANOTHER STEP TOWARDS THE DIGITAL ERA OR A THREAT TO FUNDAMENTAL RIGHTS AND FREEDOMS?

ABSTRACT: Artificial Intelligence (AI) constitutes one of the most fundamental pillars for the implementation of the EU Digital Agenda. It corresponds to the tremendous ongoing technological evolution which is marked by the spread of the digitalization in both private and public sector. AI tools provide numerous services, such as faster decision-making, performance of multiple tasks and repetitive jobs on our behalf and diagnosis of risky situations. This paper puts a special emphasis on the ChatGPT which is considered the most illustrative representative of the current AI technology. Within a minimal time of its existence this innovative viral chatbot has started to dominate the world of AI. However, its use raises serious legal and ethical risks for our privacy and protection of fundamental rights and freedoms, born by the lack of a binding regulatory framework governing AI. Therefore, at first level, this study focuses on the legal regime which governs the use of ChatGPT, by interpreting the legal status, after giving a short demonstration of its function and services (Section I). Secondly, a critical approach will be pursued focusing on special issues regarding this new AI tool on the basis of its application in practice at the area of journalism (Section II). Following that intense analysis, the paper aims to lead to fruitful and original conclusions with

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the ultimate goal to enhance the establishment of a powerful, safe and trustful digital environment.

Keywords: *Artificial Intelligence, ChatGPT, privacy, personal data, trustworthy AI.*

1. Introduction

Since we are living in the digital age, AI systems and scientific tools are omnipresent in many areas of private and public life. In healthcare, robotic surgery, cardiac ultrasound tools, clinical diagnosis based on machine-learning systems are some of the elements which demonstrate the rise of AI technology. The use of machine learning models to search medical data and uncover insights to help improve health outcomes and patient experiences is occurring almost on a daily basis. In e-commerce, chatbots are used by a large number of companies providing a big variety of services, as it has been already exposed. As Augusto (2021) and Kirwan and Zhiyong (2020) point out through their study "smart cities are also a representative example of AI technology." The continued growth of urbanisation presents new challenges. According to a survey conducted by the United Nation's Department of Economic and Social Affairs on 2018, 55% of the world's population reside in urban areas. This is expected to rise to 68% by 2050(Department of Economic and Social Affairs of United Nations, 2018).Smart Cities are part of the solution to the growing challenges of urbanization which demand sustainable development and improvement of quality of life. Smart cities can use artificial intelligence to see their effect on the local environment, global warming, as well as the pollution level. Using AI and machine learning within pollution control and energy consumption, allows authorities and cities to make well informed decisions that are best for the environment.

The aforementioned references are just indicative illustrations of the ongoing and daily use of Artificial Intelligence in our lives. At EU level, AI is the most or at least among the most representative actions of implementation of the EU digital strategy. It reflects the digitalization which penetrates our society in all sectors of private and public life and puts a clear focus on data, technology, and infrastructure.

In addition, AI plays a major role in shaping Europe's digital future. It constitutes one of the most important actions in order to empower people with a new generation of technologies and create a fair and competitive environment for people and businesses. The EU's approach to artificial intelligence centres

on excellence and trust, aiming to boost research and industrial capacity and ensure fundamental rights(EU digital agenda on Artificial Intelligence,2019).

The European approach to artificial intelligence (AI) will help build a resilient Europe for the Digital Decade where people and businesses can enjoy the benefits of AI. It focuses on 2 areas: excellence in AI and trustworthy AI. The European approach to AI will ensure that any AI improvements are based on rules that safeguard the functioning of markets and the public sector, and people's safety and fundamental rights.

However, there are many legal and ethical concerns regarding AI, such as: can can AI substitute or replace human factor in public and private life? Is AI always trustworthy and can lead to safe conclusions?Will AI in the form of ChatGpt and similar 'largelanguage models' contribute to the further easier spreading of misinformation and falsehoods, thus endangering the very fundamentals of democratic societies? Ethical considerations and limitations are societal norms and protect society from transgressions, could we expect those Artificial Intelligence tools to be able to respond to ethical standards?Those questions describe the context of the present paper which aims to present the nature of ChatGPT, an innovative viral chatbot that within a minimal time of its existence, dominates the world of Artificial Intelligence and raise a series of concerns. Consequently, at first level, this study will focus on the legal regime which governs the use of ChatGPT, after giving a short demonstration of its function and services (Section I).Secondly, a critical approach will be pursued focusing on special issues regarding this new AI tool, such as its ethical dimension, its impact on education and on the exercise of fundamental human rights, especially of those of privacy and freedom of expression (Section II). Following that intense analysis the paper aims to lead to fruitful conclusions with the ultimate goal to enhance the establishment of a powerful, safe and trustful digital environment.

2. Section I: the conformity of ChatGPT with the European Law

I. Describing the function and services of ChatGPT

Before proceeding to the legal framework ruling the use of ChatGPT it is necessary to provide a short presentation of its services. Therefore, ChatGPT is a large language model chatbot developed by OpenAI based on GPT-3.5. It has a remarkable ability to interact in conversational dialogue form and provide responses that can appear surprisingly human. It was

created in November 2022 by San Francisco-based artificial intelligence company OpenAI which is specialized in developing Large Language Models (AI learning machine tools) (Montti, 2022). As it is explicitly announced through the official website of the company, (ChatGPT, 2022) "interacts in a conversational way. The dialogue format makes it possible for ChatGPT to answer followup questions, admit its mistakes, challenge incorrect premises, and reject inappropriate requests." Despite its short history, this AI tool knows a tremendous and massive expansion since, according to the recent reports, jumped to a million users just five days after its founding in November 2022. This number is incredible in comparison to other popular online platforms which enjoyed such attraction in a greater time, as it is clearly demonstrated by the research conducted by Ahmed (2023) and Buchholz (2023). All those elements verify that ChatGPT constitutes a milestone in the recent AI era, knowing a huge and ongoing acceleration in its development.

That AI tools provides multiple services in various areas, such as in commerce, online shopping, employment and scientific domains. ChatGPT can also be used to create interactive storytelling experiences, allowing users to explore and learn from virtual worlds. Some use cases for ChatGPT include:

- Generating responses in a chatbot or virtual assistant, to provide more natural and engaging interactions with users;
- Brainstorming content ideas on keywords or topics;
- Creating personalized communication, such as email responses or product recommendations (Marr, 2022).

II. Legal governance of ChatGPT.

Being an inherent part of AI, it becomes apparent that the legal rules which govern Artificial Intelligence are applying to that new AI model. At this point, it should be noticed that, for the time being, there is not a uniform and binding regulatory framework at the field, something which poses serious concerns regarding the protection of privacy and security as well as of other fundamental rights and freedoms, as Kouroupis and Serotila (2022) thogoughly analyze in their latest book (pp. 97-128).

On 21 April 2021, the European Commission ("Commission") adopted a proposal for a "Regulation laying down harmonized rules on Artificial Intelligence" ("AI Regulation"), which sets out how AI systems and their outputs can be introduced to and used in the European Union. The draft AI Regulation is accompanied by a proposal for a new Regulation on Machinery Products, which focuses on the safe integration of the AI system into

machinery, as well as a new Coordinated Plan on AI outlining the necessary policy changes and investment at Member State level to strengthen the EU's leading position in trustworthy AI.[1]

According to the official pressrelease published the European Commission regarding the newrules for Artificial Intelligence (European Commission, 2021). Thereareadoptedriskcategories based on the intended purpose of the AI system, in line with the existing EU product safety legislation. Those categories are the following: unacceptable, high, limited and minimal risk. The criteria for this classification include the extent of the use of the AI application and its intended purpose, the number of potentially affected persons, the dependency on the outcome and the irreversibility of harms, as well as the extent to which existing Union legislation provides for effective measures to prevent or substantially minimise those risks.

The ChatGPT corresponds to the second level of risk, that of high-risk. Since it interacts in a conversational way, it develops a "human behavior", having a strong impact on fundamental rights, such as those of freedom of expression and right to education. Therefore, requirements such as those of transparency, security and the provision of information to users, should be fulfilled.

Furthermore, it is crucial to underline that besides the AI rules, the General Data Protection Regulation shall be also respected. Since this learning language model operates on the base of a record of personal information provided by individuals, all the relevant provisions and principles regarding the lawfulness of processing personal data are in force. At this point a crucial clarification should be added: The only data protection regulation OpenAI mentions on its privacy policy page is the California Consumer Privacy Act (CCPA), which applies in the state where the company is based. For instance, the company states that California residents have "the rights to know what Personal Information we have collected and how we have used and disclosed that Personal Information; the right to request deletion of your Personal Information; and the right to be free from discrimination relating to the exercise of any of your privacy right." Consequently, it appears not obvious or certain whether ChatGPT is GDPR compliant (Poireault, 2023).

However, following its privacy policy, it is explicitly declared the potential process of personal data.Thus, articles 2§2a and 3 of the GDPR referring to material and territorial scope, are applying.

[1] At the time being the draft AI Regulation is being processed by the European Parliament and Council.

In addition, it is of primary interest to underline that Artificial Intelligence poses new challenges because it enables machines to "learn" and to take and implement decisions without human intervention. Yet, decisions taken by algorithms could result from data that is incomplete and therefore not reliable, they may be tampered with by cyber-attackers, or they may be biased or simply mistaken. The ChatGPT is a representative example of the above declaration. Unreflectively applying the technology as it develops would therefore lead to problematic outcomes as well as reluctance by citizens to accept or use it. In that terms, AI technology, thus the ChatGPT, should be developed in a way that puts ethic values at the summit of all plans and goals.

The need for ethics guidelines led to the establishment by the Commission of a high-level expert group on AI representing a wide range of stakeholders (Shaping Europe's digital future). The group is responsible on drafting AI ethics guidelines as well as preparing a set of recommendations for broader AI policy. The AI high-level expert group published a first draft of the ethics guidelines in December 2018. Following a stakeholder consultation and meetings with representatives from Member States, the AI expert group has delivered a revised document to the Commission in March 2019. In their feedback so far, stakeholders overall have welcomed the practical nature of the guidelines and the concrete guidance they offer to developers, suppliers and users of AI on how to ensure trustworthiness.

Guidelines for trustworthy AI drafted by the AI high-level expert group: The guidelines postulate that in order to achieve 'trustworthy AI', three components are necessary: (1) it should comply with the law, (2) it should fulfil ethical principles and (3) it should be robust. the guidelines identify seven key requirements that AI applications should respect to be considered trustworthy. The seven key requirements are the following (Ethics Guidelines for Trustworthy AI:

Human agency and oversight, *Technical robustness and safety*, *Privacy and data governance*, *Transparency*, *Diversity, non-discrimination and fairness*, *Societal and environmental well-being* and *Accountability*.

III. A holistic approach of the ChatGPT regime

After having demonstrated the legal framework as well as the ethical principles which (should) penetrate the use of ChatGPT, there will be attempted a critical approach regarding the applicability of the exposed rules on that new AI tool. For purposes of better consideration and evaluation of the subject

matter, the ethical dimensions will be thoroughly studied and analyzed during the second chapter of the paper.

Therefore, the concern that arises is whether a compliance of ChatGPT with AI and GDPR rules can be achieved. The greatest interest is focused on the protection of subject's rights as well as of the respect of the principles relating to processing of personal data (General Data Protection Regulation, Article 5). Hence, it follows a critical analysis of the aforementioned statement, based on the conformity of ChatGPT with several articles of the GDPR:

Article 5: Principles relating to processing of personal data.

- Principle of transparency: it appears dubious the extent of the respect of this principle since the type of the personal information collected either is not defined or it is quite vague, covering a wide range of personal data such as social, communication and technical information.
- Principles of purpose limitation and data minimisation: since this language machine learning model processes a huge sort and different categories of personal data for any circumstance needed, it is not certain how those two principles are respected.
- Storage limitation: there is not a defined and clear provision regarding this issue.
- Integrity and confidentiality: it is explicitly mentioned that "*in certain circumstances we may share your Personal Information with third parties without further notice to you, unless required by the law, including without limitation in the situations*" such as vendors and Service Providers, Business Transfers etc. Consequently,ChatGPT has the ability to share personal data – from its training datasets – with its users. However, this functionality probably breaches european data protection laws since the undefined procession of personal data does not ensure appropriate security, leading indirectly (or even directly) to an unauthorised or unlawful processing.

Article 6: Conditions for consent.

In the last section of its privacy policy, it is mentioned the following: "*By continuing to use our Service or providing us with Personal Information after we have posted an updated Privacy Policy, or notified you by other means, you consent to the revised Privacy Policy*". However, the GDPR requires consent to be opt-in. It defines consent as "*freely given, specific, informed and unambiguous*" given by a "*clear affirmative action*". It is not acceptable to assign consent through the data subject's silence. Therefore, there is clear violation of the article 6 of the GDPR.

Articles 12-23: Rights of the data subject.

Regarding that section, it becomes apparent that many rights may be violated since, according to the privacy policy of the AI tool, in many cases there is an obscure and unlawful processing of data rights. Indicatively, the right to be forgotten which is predicted under article 17 of the GDPR, is frequently violated due to the performance of ChatGPT. More specifically, this AI model tool does not collect any new information from the internet itself. Rather, it utilizes the data it already knows to generate responses. A lot of personal data from people who are often talked about on the web is included in its pre-existing dataset. In addition, it uses a machine learning method called transfer learning, which involves a model that is first trained on a data-rich task and then fine-tuned to a separate task. In this case, the model is pre-trained on a massive collection of words taken from the web and then tuned for the particular activity, according to Hilemann (2023). Consequently, in case of exercise the right to be forgotten, the AI learning machine tool should comprehend what data is used to create the archive of responses. However, this is neither certain nor an easy process since there is a procession of vague categories of personal data. In addition, in case of positive response to the right to be forgotten, the information requested shall be deleted. That would harm the efficient performance of the AI tool; Hence, the data processor would most probably deny the fulfillment of the right.

3. Section II: Ethical considerations of ChatGPT: challenges for journalism

Researchers have long debated the importance of the freedoms of information and communication in the establishing and furthering of any democracy. Reflected in the journalistic work and the media are the potential, the dynamics and the shortcomings of that given society. If one could paraphrase Hegel, one could claim that each society has the journalists and the media it deserves. Media and journalism shape realities and nurture debate in thepublic sphere, strengthening democratic dialogue. However, the digitalization of the era, the technological advances in general, the turn towards the 'new digital media" challenge journalism and journalists on multiple levels.

- Journalism is being transformed "in the ways it is produced, distributed and used"(Van der Haak, Parks & Castells, 2012). We observe both media convergence and a numerical diversity of media. "This nexus of ownership and market power spans different segments of the media and is qualitatively different from previous times" (Winseck, 2008).

More often than not, these companies hold interests beyond the journalism domain and are closely linked to political elites and power centers, thus challenging the independence of journalistic content, already limited by lesser source diversity. In the past decade journalism adapted to technological and societal changes and incorporated:

- new forms of presentation (multimedia story-telling, immersive journalism),
- new ways of involving the audience (participatory journalism),
- new ways of addressing issues and highlighting solutions (constructive journalism),
- and new forms of automation robot journalism and data journalism.

Kovach and Rosenstiel (2001) describe journalists as providing a public service: as watchdogs, gatekeepers, active collectors and disseminators of information; as striving for objectivity by remaining impartial, neutral, objective, fair and (thus) credible. Journalists must be autonomous, free and independent in their work. Moreover, journalists work with asense of immediacy, actuality and speed which is inherent in the concept of news; and last but not least journalists have a sense of ethics, validity and legitimacy.

In other words, journalism provides a set of values that relate to news, the truth and public service, despite of the huge diversity in the field. These values become meaningful in the news culture in a specific time and place. Journalists come to embody these values in their everyday practices at work, In the center of journalism practice lies the factor journalist, whose ethos and practices determine to a great degree of the quality of journalism presented. "The industry that has arisen around journalism's everydayness does not define what it is–the idea(l)s, debates, and practices of journalists inhabiting these institutions do" notes Mark Deuze (2019).

Journalism and the media have long relied upon platform companies for the dissemination of their news stories. Data Journalism, which collects and analyses data has become the main routeto doing investigative reporting, has successfully brought to the public eye cases like the Panama and Luxemburg Papers, advancing the concept and practices of collaborative journalism, in a relatively short time.These cases were an example of ethical usage of data, as data had been collected, evaluated, cross checked and verified and then edited into stories by journalists. Interviews, and independent reporting were used to verify data, and bring in any other views on the data. Even though one could argue that the initial huge bulk of data was leaked to the journalists and their respective media, the publication of the storiesoccurred once the parameters

of journalists' code of conduct and media self-regulation were addressed. Data and AI were successfully used as tools and nothing more. Accountability on the content of the publications lied with the journalists and their media.

Automated algorithmic content creation tools have been increasingly used in media across the journalistic spectrum. For the past few years organisations like the Washington Post or the GuardianadoptedAI to draft stories. News for the weather for example have been written by AI. The Associated Press (AP) uses this technology to produce content with Wordsmith, a software tool developed by Automated Insights, in what has been named as Algorithmic Journalism (Doer, 2015).Similarly, we have encountered terms such as robot journalism, automated journalism or machine written journalism (Anderson, 2012).

However, AI in the newsroom, presents a new challenge for journalism, its veracity and moreover its control over the story. AI has the potential to fundamentally change the way news are gathered, verified, produced and distributed (Simon, 2022).Taking into account the ability to create content without journalistic authority questions such as separation of fact and fiction, PR and advertisement presented as newsworthy value content, correctness of reported facts, respect for privacy and copyright or even the application of specific appropriate research methods have to be discussed (McBride, & Rosenstiel, 2013).

The already complicated domain of Journalism and the media industries, becomes more tangled and complex with AI usage in newsrooms. Diakopoulos, argues that AI is "a new medium through which journalists can express and exercise their ethical and normative values through the code they implement." He further writes that "the future of AI in journalism has a lot of people around" (Broussard, Diakopoulos, Guzman, Abebe, Dupagne, & Chuan, 2019), which implies that the profession will not become superfluous. The question that should be addressed is not if journalists will still have a job to go to, but what this new journalism entails. AI software, like ChatGPT use data models to produce realistic looking text, an image that reads real, but is at best loosely based on real facts, and usually a synthesis of various elements unconnected to each other in reality.

Three main ethical concerns regarding AI Journalism

1.Human agency: human (moral) agency is partly at least delegated to the algorithms, (Dörr &Hollnbuchner, 2017) "allowing limited algorithmic intentions and autonomy". Non journalistic actors are involved in the news

production, thus changing the hierarchies within the media organizations and more importantly, changing the norms concerning accountability and bias. Who is accountable for the final product of the algorithmic journalism? Has the creator of the algorithm incorporated their own bias in it?Is the journalist in the position to interact and adapt the software?

2. Data reliability, objectivity and responsibility: The technical nature of coding, often requires the involvement of external providers. Next to the possibility of bias, questions regarding the reliability of the data, the methods used in data collection and processing as well as the legal issues regarding amongst others limitations and privacy should be considered. Transparency is a key concept in both the mining of data and the publishing the generated stories based on those data. Moreover, the fact that journalistic content spread on various media, reaches a vast audience of various demographics, makes the question who owns the data extremely important.

3.ChatGPT and other similar programs have the capacity to generate and promote false narratives. Technology may be used to facilitate knowledge or disseminate misinformation. In an Open AIreport published in 2019, whose authors included GPT researchers warned of"three tiers of malicious actors:

1. Low-skilled, limited resource actors who may be ideologically motivated or simply curious in their abilities. They may attempt to alter training data to bias a language model.
2. Actors with moderate programming skills and resources who are able and willing to build a malicious product, such as tools for webspam.
3. Advanced persistent threats (APTs): highly skilled and well-resourced groups, like state-sponsored actors, that have a long-term agenda" (Solaiman, et al., 2019).

According to the report the motives for all three actors could be the same, that is the pursuit of monetary gain, a particular political agenda, and/or a desire to create chaos or confusion.

The principle of ChatGPT, to generate a response based on thousands of internet sources, makes it a valuable asset. The fact however that for the time being at least, copy generated by AI is imperceptible to human readers and anti-plagiarism software, makes it problematic. Authorship for any given content should be clearly stated, and even though that ChatCPT may be attributed as the author/source, that does not speak of the reliability of the content.

I have posed the question on ChatGPT regarding misinformation and ChatGPT. It generated a text in which it specifically stated: "it is important to

note that as a language model, I do not have the ability to discern the accuracy of the information I process, I generate responses based on statistical patterns derived from the data I saw trained on, and my responses may reflect biases or inaccuracies that exist in that data [...] filtered and curated to minimize […] false or misleading information."

It seems that algorithmic ethics are needed more than anything else. Nicholas Diakopoulos, Professor of Computational Journalism, writes that journalism should investigate the "societal power exerted through such algorithms". "[…] various newsworthy angles on algorithms including discrimination and unfairness, errors and mistakes, social and legal norm violations and human misuse" (Diakopoulos, 2019).

Journalists ethical compass regarding the stories created by AI should be fully operational and focused. Beyond the expected questions of accuracy, right to the data journalists working with AI should be making the decision of which story should be lead or when an update or sudden development must be covered. Journalists should also be able to determine which subject matter is appropriate for automation and whether full disclosure of who (human or AI) is behind the content (Kent, 2015).

The ethical questions and challenges for journalism and journalists, arising from the development and utilization of algorithmic programs like ChatGPT, are real and require multifaceted responses. Journalists must develop competences in digital and computational literacy. Critical thinking and relationship building, fundamental to journalism, cannot be duped, or produced by algorithms. AI has a very specific role in journalism, to sort and integrate information, refine presentation, assist with distribution. The issue is:not whether data, computers and algorithms ca be used by journalists in the public interest but rather how, when where , why and by whom"(Howard, 2014). Latar (2015) points that "No robot journalist can become a guardian of democracy and human rights. It is therefore extremely important that human journalists should understand the dramatic developments in their professions and make sure these changes serve them in ways that will preserve and strengthen their very important social function."

AI companies should implement ethical standards regarding their acquisition, interpretation and usage of data. Concerns about transparency, privacy bias and discrimination should be addressed promptly. A legal framework in which fundamentals rights and freedoms are safeguarded must be agreed upon, so that AI journalism can be "this approach to knowledge", as Professor Shapiro (2020) declares.

4. Conclusions

It has been clearly demonstrated that AI constitutes more a reality than a future goal since it is appeared in several areas of private and public life. Furthermore, European digital strategy encompasses the development of Artificial Intelligence in order to modernize digital environment and maximize the growth potential of the digital economy. What is challenging is to pursue the safe use of AI which would lead to the enhancement of digital culture and consciousness.

However, towards that road, there are many obstacles focusing on the lack of a legal binding legislation governing AI at european level. Meanwhile, serious ethical concerns arise since it is dubious whether an AI learning machine can substitute human thinking and behavior. Therefore, the crucial question is the following: how human-centric approach of AI can be achieved?

The intense and critical research through this paper verified the aforementioned issues. The central element of our study is the ChatGPT which constitutes the most recent model of the scientific and digital revolution. Its evolution and capacities are tremendous since its scope of application is extremely wide and can provide a large number of services. One month ago, a judge in Colombia has caused a stir by admitting he used the artificial intelligence tool ChatGPT when deciding whether an autistic child's insurance should cover all of the costs of his medical treatment. He also used precedent from previous rulings to support his decision (Taylor, 2023). As it has been underlined at the beginning of the paper, according to the official statistics, in January 2023, ChatGPT users crossed 57 million, which furthered to over 100 million in February 2023. As it is explicitly declared, "*it had a record-breaking adoption rate in the history of the tech industry. This tremendous growth is the result of massive word-of-mouth marketing!*" (Gohil, 2023).

Consequently, the constantly increasing rate of ChatGPT users makes its use inevitable and it is only a matter of time before its official and institutional adoption in public life sectors. The fact that a combination of algorithm and information collected and processed leads to a complete source of knowledge is really provocative as well as innovative.

However, many legal and ethical concerns arise, as it has been already demonstrated. Undoubtedly, the new AI learning machine tool must be regulated, according to its creator (Simons, 2023). This has been thoroughly analyzed through the present paper (Section I). In addition, the fact that its operation is based on the collection of information from an undefined number of persons also poses risks for the reliability of the research results. Therefore, this inherent weakness of the system, regarding the issue of reliability, which

penetrates the whole function of the AI tool, can lead to an increase of fake news or disinformation. Thus, the need to control the content collected on the basis of which specific results are extracted, becomes even more imperative.

Apparently, it is our constant belief that living in the digital age presupposes trust in scientific evolution. Regarding AI it is of primary interest to achieve a powerful and trustful AI, adopting a human-centric approach. Pending the final adoption of the AI Act, in terms of the ChatGPT, any institution/organization which intends to apply the aforementioned learning machine tool shall previously design a specific data protection policy, with respect to fundamental rights and freedoms. In that vein, according to the GDPR provisions, the impact assessment is absolutely required.

Besides the legal requirements, regulating ChatGPT also needs to meet certain ethical standards in order to tackle against the ethical concerns already mentioned. Therefore, any authorization of use of this learning machine tool shall must be obtained after prior consultation of all parties involved. At this point it should be underlined that the establishment of a special consultative committee would be a reasonable and effective measure. That committee may be consisted of the following persons: a) the DPO of the institution/organization, b) the head of Human Resources Department and c) the Head of IT Unit. Undoubtedly, the participation of any other person expertized in the area of new technologies is considered necessary and valuable. The members of the committee should adopt an holistic and critical approach towards any case of potential use of ChatGPT, taking into account several principles such as those to necessity and proportionality and with respect to fundamental rights and freedoms. Finally, within the scope of its capacities, this special Consultative Committee would communicate with the competent national data protection authorities.

In terms of conclusion, it must be underlined that technology always precedes law. Consequently, any scientific evolution should be approached, in principle, positively. ChatGPT constitutes an extremely innovative AI learning machine tool providing amazingly unlimited services. Certainly, significant legal and ethical issues may be raised. However, as it has been thoroughly analyzed, there can be suggested several fruitful solutions based on strong legal background, following the recent legal and scientific evolutions. It is time to adopt an update digital culture, to incorporate in every European citizen a high level digital consciousness giving a special emphasis on the protection of human dignity. ChatGPT as any other AI model is generated by human thinking and as such it shall respect human's rights and needs. We shall always remember that statement. Only then we would build a safe, trustful, powerful and gainful digital environment.

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CHATGPT – JOŠ JEDAN KORAK BLIŽE DIGITALNOJ ERI ILI PRETNJA OSNOVNIM PRAVIMA I SLOBODAMA?

REZIME: Veštačka inteligencija (AI) predstavlja jedan od najosnovnijih stubova za implementaciju Digitalne agende EU. Ona je u skladu sa nezadrživom aktuelnom tehnološkom revolucijom koja se očituje u širenju digitalizacije i u privatnom i u javnom sektoru. AI alati pružaju brojne usluge, kao što su brže donošenje odluka, izvršavanje više zadataka u isto vreme, dosadnih, ponavljajućih poslova umesto nas, kao i procenu rizičnih situacija. Rad stavlja poseban akcenat na ChatGPT koji se smatra najreprezentativnijim predstavnikom aktuelne AI tehnologije. Za neverovatno kratko vreme, koliko postoji, ovaj inovativni viralni chatbot je uveliko zavladao svetom veštačke inteligencije. Međutim, njegova upotreba pokreće ozbiljna pravna i etička pitanja vezana za našu privatnost i zaštitu osnovnih prava i sloboda, nastalih usled nedostatka obavezujućeg pravnog okvira koji reguliše sferu veštačke inteligencije. Iz tog razloga, ovaj rad se prevashodno fokusira na pravnu regulativu koja reguliše upotrebu ChatGPT-a, tumačenjem njegovog pravnog statusa, a sve to nakon kratkog predstavljanja njegovih funkcija i usluga (prvi deo rada). Zatim se pravi kritički osvrt na posebna pitanja vezana za ovaj novi alat veštačke inteligencije, na osnovu njegove primene u praksi u oblasti novinarstva (drugi deo rada). Nakon izvršene detaljne analize, rad ima za cilj da dovede do korisnih i originalnih zaključaka koji treba da rezultiraju dodatnim poboljšanjima u procesu uspostavljanja jednog moćnog, bezbednog i pouzdanog digitalnog okruženja.

Ključne reči: *veštačka inteligencija, ChatGPT, privatnost, lični podaci, pouzdana veštačka inteligencija.*

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NEGOTIORUM GESTIO – ROMAN FOUNDATIONS OF UNAUTHORIZED MANAGEMENT OF ANOTHER'S AFFAIRS IN SERBIAN CIVIL LAW

"Aliena negotia exacto officio geruntur"
The business of another is to be conducted with particular attention
Codex Justinianus – 4, 35, 21
(Stojčević, & Romac, 1971, p. 34).

ABSTRACT: *Negotiorum gestio* is a legal institute that originates from Roman law. It still exists today and in the legal literature we find a term that defines it as: the unauthorized performance of another's affairs, i.e., agency without authority. The institute of *negotiorum gestio* has been continuously used and is the subject of legal regulation in most countries of the continental, European legal systems, including the law of the Republic of Serbia, for more than two millennia. The aim of this paper is to compare the solutions from Roman and contemporary law of obligations using the normative, descriptive, comparative and analytical-synthetic scientific methods. The paper is divided into three parts: the first part, which deals with the Roman understanding of the *negotiorum gestio* institute, the second part, which presents the current solutions regarding this institute contained in the Law of Contract and Torts of the Republic of Serbia, and

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the third part, which, using a comparative and the historical method, draws conclusions about whether current solutions contained in contemporary law are better than those that were applied in the ancient period.

Keywords: *Roman law, negotiorum gestio, the management of another's affairs without authorization, civil law, The Law of Contract and Torts.*

1. Institute negotiorum gestio in Roman law

The Roman Empire lasted more than a thousand years. During that long period, everything changed, in accordance with the Roman sentence – *panta rei*. The Roman state was changing, the structure of the population and their status in society, their rights and obligations, and finally the law itself was changing. If we look at the history of the Roman Empire through the generally accepted periodization of: the period of the kings, the republic, the principate and the dominate, a large number of legal institutes evolved, including the *negotiorum gestio.*

During the classical period, there were obligation relationships that were not classified as either contracts or torts. The main reason why quasi-contracts arose lies in the fact that classical jurists noticed that in addition to contracts and torts, as the primary sources of obligations, there are also special sources (*ex variis causarum figuris*). The famous Roman jurist Gaius (lat. *Gaius*) wrote two capital legal works: Institutions (lat. *Institutiones*) in which he presented Gaius' famous tripartite division into: persons, things and lawsuits, and another scientific work called Res cottidianae in which he also made a tripartite division, but not rights but obligations. Thus, according to Malenica, "Gaj divided obligations into: contracts, delicts and obligations arising from different causes (*obligationem ex variae causarum figurae*). In this third group, there are both obligations arising from permissible and those arising from illegal actions. The first obligations could not be classified as contracts because they were created without the consent of the will, and the second as torts because they lacked some characteristics of a tort. Both were protected by separate lawsuits. It seemed to Justinian's jurists that there was a basis for dividing these obligations into two groups, into *obligationes quasi ex contractu* and *obligationes quasi ex delictu*, i.e. obligations similar to contacts and obligations similar to delicts" (Malenica & Deretić, 2011, p. 418).

1.1. Quasi-contracts

Today we call "false" obligations quasi-contracts, although Roman jurists never used that term, because it was introduced into legal terminology by jurists from the Justinian period. Gaj and other jurists of the classical period said that the obligation arises "as if from a contract" (*quasi ex contractu*), however, during the Middle Ages, the term acquired its new form "*ex quasicontractu*" in the sense of "false, supposed contract" (Stanojević, 2010, p. 308), which has remained until today.

According to Mousourakis: "Quasi-contract' is an unsatisfactory term applied to certain specific obligations which did not arise from contract or delict but were legally enforceable. These obligations arose from legal acts that resembled contracts in respect of several characteristics, but which were nevertheless not contracts since they were not founded on agreement. These obligations were therefore said to arise 'as if from contract' (*quasi ex contractu*). The most important quasi-contracts were unauthorized administration (*negotiorum gestio*), guardianship (tutela) and undue payment (*solutio indebiti*)"(Mousourakis, 2012, p. 239)

According to their characteristics, quasi-contracts are very close to contracts, because they contain an obligation recognized by law, which is protected by special lawsuits. In addition to this similarity, quasi-contracts as well as contracts arise from legally permissible actions of the parties (although there is no agreement between the contracting parties), and in the event that a quasi-contract is established, the relations between the parties are regulated according to principles similar to those of contracts. However, there are certain differences between contracts and quasi-contracts. Quasi-contracts are not based on agreement between the parties, unlike contracts and pacts, which are. The essence of the creation of a quasi-contract lies in its creation by force of law (*ex lege*), as a result of actions and circumstances. So, unlike contracts and pacts where consent is the *conditio sine qua non* of creation, this is not the case with quasi-contracts.

Most authors agree that there were five quasi-contracts in Justinian's law: management of another's affairs without a mandate (*negotiorum gestio*), unjustified enrichment (*condictiones sine causa*), accidental property community (*communio incidens*), guardianship obligations (*tutela*), and obligations arising from *legate per damnationem* (Jocić, 1990, p. 262; Stojčević, 1988, p. 302).

Unjustified enrichment (*conditiones sine causa*) is a quasi-contract in which one party acquires a thing or value from the property of another party

without a valid legal basis, or the valid legal basis has ceased, but the party does not return the thing or value, usually due to a mistake. This obligation relationship does not have the most adequate name. Namely, the term legally unjustified enrichment is used because things are found with the debtor without a legal basis (because it was subsequently established that the legal basis has ceased to be valid or has become null), however, the debtor still holds that thing or value and in that way is getting rich. We believe that the term is not appropriate because a thief gets rich without a legal basis, but also any person who came to the state without a contract with the owner or for free, and refuses to return it to the rightful owner (e.g. a found object).

Accidental property community (*communio incidentens*) is a quasi-contract that arises when two or more persons become co-owners of some property or thing, without having had a previous agreement (eg heirs or beneficiaries). In relation to the common thing, these persons are co-owners. This legal relationship is classified as a quasi-contract, because it arose from a permitted action, but without the consent of the parties.

Obligations from tutorship (*tutelage*) – After the termination of tutorship, an obligation relationship arises between the tutor and his recent ward. In the classical period, this relationship was seen as *negotiorum gestio*. In Justinian's codification, this relationship was separated into a special quasi-contract, as a relationship that arises without prior agreement of the parties. The obligation relationship that arises after the termination of tutorship, between the tutor and the ward, carried certain rights and obligations. The tutor had to return the protégé's property and submit a report on the management of the protégé's property, and compensate him for any damage he caused in the performance of his duties. The protégé had the obligation to compensate the tutor for all the expenses he incurred in connection with the management of the property.

Obligations arising from legatees *per damnationem* arise when the testator (*de cuius*) leaves a legatee to someone. A legacy is a disposition in the event of death by which the testator leaves a certain property benefit from the legacy to a certain person (the legatee), without appointing him as an heir. The legatee does not acquire the entire inheritance, nor its aliquot part, but receives a precisely determined right from the inheritance. At the moment of death, an obligation relationship would arise between the legatee and the heir, according to which the heirs were obliged to hand over the legatee's thing. "By means of this form the legatee acquired a claim, supported by a strong personal action (*actio ex testamento*), against the heir or heirs for payment of the legacy. The effect was that the legatee was in almost the same position as a creditor of the deceased estate. Virtually any kind of thing could be the

object of such a legacy, including incorporeal things, services and even future things" (Mousourakis, 2012, p. 302).

1.2. Negotiorum gestio

Management of another's affairs without a mandate (*negotiorum gestio*) exists when one person (*negotiorum gestor*) performs an action (legal or factual) for the benefit of another person (*dominus negotii*) who did not authorize him to do so. "By such action the negotiorum gestor bound himself to conduct the matter to the end and to return to the *dominus negotii* all that he gained or acquired (proceeds, fructus) from the transaction; on the other hand the latter was bound to reimburse the gestor for his expenses" (Berger, 1968, pp. 593-594).

In terms of their content, negotiorum gestio and mandate have certain similarities, and because of this, they are legally regulated in an identical way in many legal systems. *Mandatum* (mandate, representation) is "consensual contract by which a person assumed the duty to conclude a legal transaction or to perform a service gratuitously in the interest of the mandator or of a third person. The Mandatum was based on a personal relationship of confidence (friendship) between the parties, it therefore ended by the death of one of them, by revocation by the mandator or renunciation of the mandatary" (Berger, 1968, p. 574). "In both cases one person (the mandatarius/the gestor) manages somebody else's (the mandator's/principal's) affairs. As in mandate, the scope of matters which the gestor can take care of for the principal is very broad; they may be of a factual or of a legal nature. As in mandate, the (negotiorum) gestor must, however, not have acted solely in his own interest. The negotium has to be alienum, or alterius; it may be alienum et suum, but it may not be suum tantum. Like mandate, negotiorum gestio gives rise to an imperfectly bilateral relationship. There is, first of all, an actio directa, by means of which the principal may sue the gestor for damages in case of mismanagement and for the restoration of whatever the latter might have acquired in the course of executing the gestio. The gestor, on the other hand, may avail himself of the actio negotiorum gestorum contraria, if and when he has incurred any expenses or suffered damages. The main difference between mandatum and negotiorum gestio is that the one is a contract, the other an obligational relationship ex lege. The right-duty connection between gestor and principal, in other words, is not based on any kind of agreement but arises from the mere fact of the negotiorum (alterius) gestio" (Zimmermann, 1990, pp. 433-434).

Conversion of these two obligation relationships is possible. *Negotiorum gestio* is carried out without authorization, without approval. However, the subsequent approval of the work, while it is still in progress, by the *dominus negotii*, turns the unauthorized work into an authorized one, whereby the negotiorum gestio takes the form of a mandate. This subsequent approval in Roman law also had its own special name: *ratihabitio* (Šarac, 2008, p. 767). "According to Justinian's law, ratihabitio always exists when the master knows about the performance of the work and does not prohibit the further work of the *negotiorum gestor*" (Milošević, 2005, p. 358). It was not required that the owner not know about the interference in his affairs, but it was enough that he did not oppose it.

By performing other people's work, between the negotiorum gestor and the owner (*dominus negotii),* an obligation relationship arises in which the negotiorum gestor must act with special care when performing the work. "The business must have been carried on in the interest of the other. In Roman Law a voluntary agent could recover his expenses only if he acted in the interest of the principal. If the agent acted solely in his own interest, he could not recover as negotiorum gestor but he might have an action (condictio) against the principal to the extent that the latter was unjustly enriched at his expense" (Lorenzen, 1927, p. 192). *Negotiorum gestor* is entitled to both necessary and useful expenses, but not luxury expenses, for carrying out the work of another. If, however, the owner has not approved the work, then he is not obliged to reimburse any costs.

In the legal literature, we find five essential conditions necessary for the existence of *negotiorum gestio* in Roman law: "a) The work performed by the *negotiorum gestor* must be someone else's, which was first evaluated according to objective criteria, but since the post-classical period, the subjective aspect has also been looked at, i.e. whether he had the intention and was aware of doing someone else's work. If it is a matter of disposing of one's rights or performing work on one's own account, this obligation will not exist; b) He had to undertake the work on his own initiative, as a result of his free will, otherwise, if it was undertaken due to some contractual or legal obligations, this obligation relationship will not exist, but another, usually a *mandate*; c) The work must be useful for the *dominus negotii* and evaluated objectively, whereby the final result was not required to be successful, but in some cases the subjective assessment of the business owner was also taken into account; d) The work should have been undertaken with the intention of demanding compensation from the *dominus negotii* for the costs he incurred in carrying out his work; e) It was required that the owner does not know that

the negotiorum gestor is performing his duties, if he knew and did not object, there will be a mandate (*mandatum*)" (Jocić, 1990, p. 263).

In this way, *negotiorum gestio* became a two-sided unequal obligation, with rights and obligations on both sides in an obligation relationship. The undertaken work performed by the *negotiorum gestor* would create an obligation relationship that created certain rights and obligations: the *negotiorum gestor* was obliged to do the work he started with increased conscientiousness, to bring the work started to completion, to submit an account of the work done to the owner of the work and to transfer to him all that he acquired by performing the work. *Negotiorum gestor* is also responsible for *culpa levis* (lack of ordinary care), and if he prevented the occurrence of damage by performing the work, he would be responsible only for dolus, "The term used by Roman jurists to denote "cunning and fraudulent behavior done in an effort to mislead, deceive others and damaged" (Bujuklić, 2007, p. 269).

The *dominus negotii* was obliged to compensate all the costs that the *negotiorum gestor* incurred while performing the work and to assume all the obligations that the *negotiorum gestor* took upon himself while performing the work. *Dominus negotii* was obliged to bear only the expenses that were necessary and useful to him.

Regarding the protection of their claims*, dominus negotii* and *negotiorum gestor* had different claims. *Dominus negotii* had at his disposal the *actio negatorium gestorum directa*, and the *negotiorum gestor actio negatorium gestorum contraria.*

2. Management of another's affairs without a mandate (*negotiorum gestio*) in the civil law of the Republic of Serbia

In the civil law of the Republic of Serbia, management of another's affairs without a mandate is regulated by articles 220-228 of The Law of Contract and Torts from 1978. Within these articles, the following is regulated: duties of a manager of another's affairs, due care and responsibility, rights of a manager of another's affairs, doing other people's work with the intention of helping others, taking allowances, management of another's affairs despite the ban, wrong management of another's affairs and subsequent approval.

Article 220 of the law defines the general rules governing the management of another's affairs without a mandate (*negotiorum gestio*): "(1) Doing business without an order means carrying out the transactions of another person, whether legal or material, without order or authority, but on

account of the one otherwise normally engaged in them, and for the purpose of protecting that person's interests. (2) Doing other person's business without invitation is permissible only should the transaction need to be carried out without delay, because of possible immediate danger of damage or loss of an obvious benefit" (The Law of Contract and Torts, art. 220).

The Law of Contract and Torts (1978) allows the performance of another's work without authorization if there is urgency, and it exists in the case where the delay would result in damage to the person whose work it is. The second condition is that there is a benefit to the person whose job it is. This benefit does not always have to be material, although it most often is. The benefit that arises does not have to appear only to the person whose job it is, but also to another person. For example, if a tenant undertakes necessary repairs to the building he lives in, because the owner of the building is prevented from doing it himself, thus his interference in the business of the owner of the building benefits him, as well as other tenants who live in that building. As Marković observes: "Performing other people's work can only be approached informally if the work does not suffer from delay and damage or loss of obvious benefit is imminent" (Marković, 2015, p. 41).

Interference of a person in someone else's affairs without authorization can be achieved by both material and legal action. It can be any act that the manager of another's affairs would undertake without an order, which represents the performance of some obligation of the person whose job it is or the acquisition of some right for him, and also any material action that he performs with the intention of the person whose job it is, it establishes the relationship of management of another's affairs (Perović, & Stojanović, 1980, p. 665). For the creation of this obligation relationship, the fulfillment of one negative condition is required: that the person whose job it is has not prohibited someone from interfering in his affairs without authorization.

Regarding rights and obligations, the law states the following: "(1) A manager without order (authority) shall notify the principal for whom he acts about his act as soon as possible and shall continue the business commenced, should this be reasonably possible, until his principal is able to take over the matter. (2) After completing the business transaction he shall render account thereof and shall hand over everything he has acquired while doing his business to his principal. (3) Unless otherwise ordered by statute, a manager acting without order (authority) shall have the duties of authorised person" (The Law of Contract and Torts, art. 221).

A manager without authority is obliged to inform the person in whose work he interfered as soon as possible about his procedure. It is only extremely

permissible to interfere in other people's business without approval, and only under the conditions provided for by law, when there is a threat of damage or loss of benefits for the person whose business it is. Management of another's affairs can occur under different circumstances, so a manager without authority may not be able to inform the other party. For example, when he does not know who the person in whose business he interfered is, or when he knows but that person is absent. The law stipulates that in that situation a manager without authority should continue with the work he started, and upon completion, send him to pay the bill and hand over the work to the person whose job it is. A job started by a manager without authority must not be abandoned.

A manager without authority doesn't just have obligations. The law also lists the rights that belong to him: "1) A manager without order (authority) who has acted in all respects reasonably regarding the circumstances of the case, shall be entitled to request his principal to relieve him of all duties assumed by him because of the business, to take over all duties entered into on his behalf, to redress all his necessary and useful expenses, as well as pay for any eventual loss sustained by him, even should the expected result not be achieved. (2) He shall also be entitled to adequate compensation for his efforts, after deducting losses sustained by his principal, or after providing him with a benefit entirely corresponding to his intentions and needs" (The Law of Contract and Torts, art. 223).

By performing other people's work, it is possible to increase other people's property, and the question arises, what if the expenses incurred by a manager without authority for performing someone else's work are not compensated? In order to eliminate any doubts, the law also provided for this possibility. Namely, every manager without authority has the right to take away things with which he has increased someone else's property and for which he is not compensated for the expenses incurred, if they can be separated without damaging the thing to which they were added. The person whose business he interfered with can, if he wants, keep those extras if he compensates him for their current value, but at most up to the amount of expenses incurred. Therefore, this right belongs only to expenditures that were necessary and useful.

Article 226 regulates managing other person's affairs despite a prohibition (*prohibente domino*). "1) Whoever carries on business on behalf of another in spite of a prohibition by his principal shall not have the rights of a manager acting without authority, provided he was aware or had to be aware under the circumstances of the prohibition. (2) He shall be liable for damage caused by

interfering in other person's affairs, even should damage occur without his fault. (3) However, should the prohibition to engage into the affair be contrary to law or morals, and in particular should someone prohibit the other person to fulfill his statutory duties which must not be postponed, the general rules of managing business without authority shall apply" (The Law of Contract and Torts, art. 226).

The existence of a ban excludes the possibility that a person who has interfered in other people's affairs, despite the ban, may acquire the position of manager of another's affairs. The person whose job it is, can pronounce the prohibition of interference in business before the interference itself, but also after the interference has already started. In order for the prohibition to be effective, it is necessary that it fulfills certain conditions: the prohibition must be known to the person who interferes in another's business or, according to the circumstances, must have known about it. The second condition is that the ban on the performance of work must not be against the law or morality. For example no one can prevent the extinguishing of their house that has been engulfed in fire.

The person who is the owner of the work can later approve what was done even then "the manager without authority shall be considered as person having received authority and as if he had acted from the beginning by authority of his principal" (The Law of Contract and Torts, art. 228).The statement giving subsequent approval can be expressed in any way, even indirectly. If the job owner approves, after execution, what has been done, the manager of another's affairs becomes the assignee and is considered to have worked on the order of the job owner from the beginning.

3. Conclusion

The legal solution that regulates the management of another's affairs without a mandate deviates from the solutions that existed in the past. In older codifications, the performance of other people's work without authorization was only allowed in order to eliminate greater damage to the persons whose work it is. However, the current law allows the performance of other people's work even when it has the purpose of achieving an obvious benefit to the person whose work it is. However, even according to the current Serbian law, it is forbidden for someone to carry out other people's work without authorization, and if someone acts contrary to this prohibition, he is exposed to responsibility. The purpose of this prohibition is to protect a person's personality, respect his freedoms and ensure the inviolability of his rights.

Of course, there are situations when doing other people's work without authorization is allowed if special conditions are met and if it is done in the manner and within the limits prescribed by law.

The institute management of another's affairs without a mandate has a lot of similarities, but also differences compared to the Roman negotiorum gestio, especially from the period of Justinian's codification. The biggest difference compared to solutions from the past relates to the obligation of the gestor to inform the business owner as soon as possible that he will manage his affairs, but for that he must wait for approval and thus convert the legal work into an order. Like most of the real institutes taken from the Roman law, they continued to live in the same or modified form and in the rights of continental-European legal systems, while they do not exist in the common law system. This is also the case with the institute negotiorum gestio, i.e. management of another's affairs without a mandate. It does not exist in Anglo-Saxon common law, with the exception of maritime law, where a special institution of rescue (salvage) has been developed, which recognizes the salvager's right to compensation for salvage.

In law, there is a principle "*Culpa est immiscere se rei ad se non pertinenti*" – "It is a fault to meddle with what does not belong to or does not concern you" (*Pomponius – The Digest of Justinian* – 50, 17, 36) (Stojčević, & Romac, 1971, p. 83). Where is the justification for management of another's affairs without a mandate? When the legislator looks for justified reasons for allowing someone to enter someone else's sphere with his actions, he starts from the principle of altruism. The legislator exceptionally allows meddling in other people's affairs, if there is approval. We consider this solution correct, because interference in other people's affairs is allowed only when help is necessary, in the interest of the party in whose sphere one interferes. In practice, this legal solution proved to be correct, leaving no room for free interpretation in cases of management of another's affairs without a mandate.

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NEGOTIORUM GESTIO – RIMSKI TEMELJI NEZVANOG VRŠENJA TUĐIH POSLOVA U SRPSKOM GRAĐANSKOM PRAVU

REZIME: *Negotiorum gestio* je pravni institut koji potiče još iz rimskog prava. On postoji i danas, a u pravnoj literaturi srećemo termin koji ga definiše kao: nezvano vršenje tuđih poslova tj. poslovodstvo bez naloga. Institut *negotiorum gestio* se u kontinuitetu koristi i predmet je pravne regulative u većini zemalja kontinentalnog, evropskog pravnog sistema, gde spada i pravo Republike Srbije, već više od dva milenijuma. Cilj ovog rada je da se upotrebom normativnog, deskriptivnog, komparativnog i analitičko-sintetičkog naučnog metoda, uporede rešenja iz rimskog i savremnog obligacionog prava. Rad je podeljen na tri celine: prvi deo, u kome su obrađena rimska shvatanja instituta *negotiorum gestio,* drugi deo, koji izlaže aktuelna rešenja u vezi ovog instituta sadržana u Zakonu o obliacionim odnosima Republike Srbije, i treći deo, u kom se, upotrebom komparativnog i istorijskog metoda, izvode zaključci o tome da li su bolja aktuelna rešenja sadržana u savremenom pravu ili ona koja su važila u antičkom periodu.

Ključne reči: *Negotiorum gestio, rimsko pravo, nezvano vršenje tuđih poslova, građansko pravo, Zakon o obligacionim odnosima.*

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PROTECTION OF HUMAN AND MINORITY RIGHTS IN THE CONSTITUTION OF SERBIA WITH REFERENCE TO THE LEGAL PROVISIONS ON THE TREATMENT OF PERSONS IN DETENTION

ABSTRACT: The Constitution of the Republic of Serbia contains a large number of provisions on human rights and freedoms. The Constitution guarantees all three generations of rights. Articles 28 and 29 of the Constitution regulate the following rights: Dealing with a person deprived of liberty and Supplementary rights in case of deprivation of liberty without a court decision. Basing the provisions on the aforementioned articles of the Constitution, the criminal procedure legislation has regulated in detail the matter of dealing with persons in custody. After a detailed analysis of the rules of treatment of persons in detention, it has been concluded that it is not about any specific rights or rules, but only about the realization of the basic guaranteed rights that every citizen should enjoy, regardless of their status. Bearing in mind the topic, the paper analyzes the development and conceptual definition of human and minority rights. Some characteristic provisions of the Constitution related to the topic of the paper were also analyzed, and then an overview was made of the legal provisions in Serbia

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on the treatment of persons who are in detention, and which have their basis precisely in the provisions of the Constitution.

***Keywords**: Constitution, human rights and freedoms, rights of national minorities, criminal procedural legislation, treatment of detainees.*

1. Introduction

Human and minority rights and freedoms are regulated in the second part of the Constitution of the Republic of Serbia (2006). The basic principles governing this area are defined in articles 18-22. In the first place, it is the principle of direct application of guaranteed rights (Article 18), according to which "human and minority rights guaranteed by the Constitution are directly applied. The Constitution guarantees, and as such, directly applies human and minority rights guaranteed by generally accepted rules of international law, confirmed by international treaties and laws. Provisions on human and minority rights are interpreted in favor of the improvement of 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." The next principle speaks about the purpose of constitutional guarantees (Article 19), according to which "guarantees of inalienable human and minority rights in the Constitution serve to preserve human dignity and achieve full freedom and equality of every individual in a just, open and democratic society, based on the principle the rule of law." Then, the third principle refers to the limitations of human and minority rights (Article 20) and stipulates that "human and minority rights guaranteed by the Constitution may be limited by law if the limitation is permitted by the Constitution, for the purposes for which the Constitution permits it, to the extent necessary for the constitutional the purpose of the restriction is satisfied in a democratic society and without encroaching on the essence of the guaranteed right. The achieved level of human and minority rights cannot be reduced." The principle of non-discrimination (Article 21) defines the position according to which "everyone is equal before the Constitution and the law. Everyone has the right to equal legal protection, without discrimination. Any discrimination, direct or indirect, on any basis, and especially on the basis of race, gender, nationality, social origin, birth, religion, political or other belief, financial status, culture, language, age and mental or physical disability is prohibited." Finally, according to the principle of protection of human and minority rights and freedoms (Article 22), "everyone has the right to judicial protection if a human or minority right

guaranteed by the Constitution has been violated or denied, as well as the right to remove the consequences of the violation."

According to Teofilović (2013), "the adoption of the new Constitution of the Republic of Serbia in 2006 was expected as the most significant innovation in the field of legal regulation in the domestic legal system in the last twenty years" (p. 126). According to the opinion of the same author, compared to the then valid Constitution from 1990, "the new constitution was expected to establish the foundations of Serbia as a new state, which will enable, on the one hand, its modernization and the beginning of the process of recovery of the entire, then already almost completely destroyed, society, and, on the other hand, harmonizing internal processes with current integrative processes at the regional and international level" (Teofilović, 2013, pp. 127-128). But the most important thing "that unites these two constitutions is the concept of the basic constitutional institutes, which is the same in most of them" (Marković, 2006, p. 8).

The Republic of Serbia is a state "based on the rule of law and social justice, the principles of civil democracy, human and minority rights and freedoms, and belonging to European principles and values" (Radovanović, 2020, p. 87). Due to the above, and in the light of these highest values, "The Constitution of the Republic of Serbia guarantees human and minority rights and freedoms and establishes at the very beginning the fundamental principles on which they are based. Regulating this matter shows and confirms their special value and priority in relation to the government system, which would have to be subordinated to them and in the function of their consistent realization, improvement and protection" (Radovanović, 2020, pp. 87-88).

Bearing in mind the topic of the work, next there will be more words about the development and determination of human and minority rights, some characteristic provisions of the Constitution related to the topic of the work will be analyzed, and then a review will be made of the legal provisions in Serbia regarding the treatment of persons who are in custody, and which have their basis precisely in Articles 28 and 29 of the Constitution of the Republic of Serbia (2006).

2. Development and concept of human rights

From a historical point of view, from the creation of the first states until today, bearing in mind both the abstraction of philosophical views and the practical circumstances that man has encountered throughout history, the concept of human rights has been the basis of the study of all problems,

phenomena and concepts of the entire society. According to Milosavljević and Popović (2008), "the simplest definition of human rights is that those are rights that belong to a person by birth. By his birth, by his biological and natural existence, man is a free person" (p. 141). As a social being "he enters into various social organizations and communities, which with their norms, no matter how democratic, customary, moral and legal, in a certain way limit human rights and his natural freedoms. With the emergence of the state and the creation of various international organizations, people also become special subjects, parts of those organizations. In this way, human rights and freedoms gain special importance and actuality (Bjelajac, 2017). With its norms, the state prescribes human rights and freedoms, determines their various legal protections, but also limits the freedom that man as a natural being possesses" (Vučković, 2010, p. 158). Vasić (2000) points out that "the concept of the rule of law arose from the understanding that it is not enough for state power to be limited by law, it is also important that the law be valid in its content, which leads to the binding of law to justice and moral laws" (p. 16).

According to Milenkovic (2010), "the development of human society, and above all of the state and law, is closely related to the idea of human rights and freedoms. We find the forerunners of the idea of human rights in the ancient history, but the idea of human rights came to the fore only in the Middle Ages in the conditions of absolute monarchy. Thus, one English ruler – John Lackland, was already forced to limit his unlimited power and 'grant' the primary body of human rights 'to all free people and forever' at the beginning of the 13th century. During the 17th and 18th centuries, the issue of certain religious communities was also actualized" (p. 7).

A lot can be written and talked about the development of human rights. For the purposes of this work, it is necessary to single out, the origin and importance of several important documents, the adoption of which represented a significant step in the establishment of the modern concept of human rights protection. Namely, the Constitution of the United States of America from 1787 should be mentioned. This document is still in force today, and "contains four essential features: federalism, democracy, division of powers and republican form of government. Already in 1791, ten amendments were ratified that proclaimed the basic rights and freedoms of man and citizen (Bill of Rights), which are still an integral part of the Constitution from 1787. In this way, this Constitution receives a fifth, essential feature – the generated corpus of basic human rights of the first generation – civil and political rights" (Milenković, 2010, p. 7).

Also, it is important to mention that "under the influence of the civil revolution of 1789, the first French Constitution was adopted in France in September 1791. The adoption of this Constitution was preceded by the adoption of the Declaration on the Rights and Freedoms of Man and Citizen in 1789, and after the adoption of the Constitution, it became its Preamble" (Milenković, 2010, p. 7). In its first sentence, the Declaration "emphasizes this idea of natural law and the fundamental principle of human freedom and equality: 'People are born and live free and equal in rights.' However, people necessarily live in certain social communities in which their natural rights and freedoms are restricted in various ways. This is particularly reflected in the state, which was the strongest social organization in the past and still is today, in which the restrictions on rights and freedoms are enforced to the strongest degree" (Dimitrijević, Paunović, & Đerić, 2004; Vučković, 2010, p. 159).

The concept of the rule of law as we know it today began to develop only in the 19th century.

Here it is important to mention one document "by which human rights finally acquired an international, international character. It is the Universal Declaration of Human Rights (1948). It represents so far the most complete codification of natural law that has been done in legal history. In terms of the number and content of human rights, the Universal Declaration represents a set of all rights that have been recorded in the past. And more than that, because this Declaration expanded the institution of human rights, adding the second generation of 'economic, social and cultural' human rightsto the classic 'political and civil rights' of the first generation (Perović, 1998, p. 52). Analyzing the development of the concept of human rights, Milenković (2010) here emphasizes that this dynamic "in 1966 led to the creation of the Covenant on Civil and Political Rights (which our country ratified by the Law on the Ratification of the International Covenant on Civil and Political Rights (1971) and the Covenant on Economic, Social and Cultural Rights of the United Nations (which our country ratified by the Law on ratification of the international pact on economic, social and cultural rights (1971)). On the other hand, in Europe, the Council of Europe already adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms (which includes civil and political rights) in 1950. The rights contained in the Convention are protected through a supranational protection mechanism embodied in the form of the European Court of Human Rights" (p. 10).

3. Conceptual definition of the national minorities term and the importance of protecting the rights of national minorities

According to the provisions of Article 2, paragraph 1 of the Law on the Protection of the Rights and Freedoms of National Minorities (2002), "a national minority is any group of citizens of the Republic of Serbia that is sufficiently representative in terms of numbers, even though it represents a minority on the territory of the Republic of Serbia, belongs to one of the population groups that are in a long-term and strong connection with the territory of the Republic of Serbia and has features such as language, culture, national or ethnic affiliation, origin or religion, which differentiate it from the majority of the population, and whose members are distinguished by their care to maintain their common identity together, including culture, tradition, language or religion." Defining the concept of a national minority, Marković (2015) points out that "a national minority means a part of the members of one nation that has formed its home state, and that lives on the territory of a state that was formed by another nation, whose home state it is" (p. 489).

When it comes to international law, "it is important to point out that there is no universal definition of a national minority, which is accepted by all states or organizations. The definition highlighted by the United Nations Subcommittee for the Prevention of Discrimination and the Protection of Minorities is interesting, in which it is stated that the term minority includes only those non-dominant population groups that have and wish to preserve stable ethnic, religious or linguistic traditions or characteristics that distinguish them from the rest of the population" (Divljaković, 2018, p. 6).

The protection of the rights and freedoms of national minorities is one of the most important issues in the entire field of protection of human rights and freedoms. Here, Divljaković (2018) notes that "belonging to a national minority is very often associated with a worse social position and discrimination, so throughout history, numerous documents of both national and international law have been passed that protect the position of members of national minorities" (p. 8). This is followed by the conclusion of Đorđević, Lončar, Miljković and Bašić (2018) that "rights that directly affect the inclusion of minorities in society are the right to work and the right to participate in political life, i.e. to decide (to vote and be elected) on issues that are related to personal plans and group identity. Both rights belong to basic rights, rights of the first generation of human rights. The realization of these rights, despite being indisputable, require states to take special measures and to adapt their political and legal systems to the nature of their multi-ethnicity" (pp. 19-20).

4. Human rights and freedoms in the Constitution of the Republic of Serbia

The Constitution of the Republic of Serbia (2006) contains a large number of provisions on human rights and freedoms. The Constitution guarantees all three generations of rights: civil and political rights (the first generation of rights), then economic, social and cultural rights (the second generation of rights), and the so-called third generation rights.

Kolednjak and Šantalab (2013) state that "the first generation of human rights includes civil and political rights such as the right to freedom of expression, freedom to enjoy, right to life, right to a fair trial, etc. The second generation of human rights includes economic, social and cultural rights such as the right to an adequate standard of living, the right to health, the right to education and similar rights. The third generation of human rights refers to the collective rights of society or people, such as the right to sustainable development, peace or a healthy environment. On the one hand, the third generation of human rights indicate that human rights are not just a mere institution, but that they develop and change. On the other hand, they recognize new problems that threaten the right to life of all people, and therefore these rights should and do find their place in the catalog of human rights" (p. 324).

The second part of the Constitution of the Republic of Serbia (2006), from articles 18 to 81, is devoted to human rights. It is further divided into three parts: 1. Basic principles (articles 18 to 22), 2. Human rights and freedoms (articles 23 to 74). and 3. Rights of members of national minorities (Articles 75 to 81). Also, "certain provisions on human rights are also found in other parts of the Constitution. For example, in the Third Part, which regulates the Economic Regulation and Public Finances, there is another number of constitutional guarantees that can be qualified as human rights (Articles 82 to 90). In total, almost 70 articles of the Constitution are dedicated to basic human rights, which actually represents one third of the constitutional text, out of the total number of 206 articles" (Tubić, 2018, p. 69).

Bearing in mind that the Constitution of the Republic of Serbia (2006) contains a large number of provisions governing the protection of human rights and freedoms, at this point only a brief overview of several human rights and freedoms will be analyzed that are close to the matter that will be analyzed in more detail in the following subheading – treatment of persons in custody.

Namely, Article 23 of the Constitution regulates the right to Dignity and free development of personality. Thus, "human dignity is inviolable and

everyone is obliged to respect and protect it. Everyone has the right to free personal development, if it does not violate the rights of others guaranteed by the Constitution." According to the opinion expressed by Pajvančić, "as one of the basic values on which the constitutional system rests, the Constitution establishes that human dignity is inviolable and prescribes the obligation of all subjects to respect it (paragraph 1). Along with this principled constitutional guarantee, the dignity of the person is especially protected in the process of deprivation of liberty, and it prescribes the obligation to respect the dignity of the person in the treatment of the person deprived of liberty (Article 28, paragraph 1). Constitutional guarantees of the dignity of the person are absolutely protected rights (Article 202, paragraph 4), and are not subject to deviations even in times of war or state of emergency. Along with the dignity of the person, the right to free development of the personality is also guaranteed, and in principle it regulates the space of individual freedom, the framework of which is the freedom and rights of others (paragraph 2)" (Pajvančić, 2009, p. 36).

Article 24 of the Constitution regulates the Right to life. According to these provisions, "human life is inviolable. There is no death penalty in the Republic of Serbia. Cloning of human beings is prohibited." According to the opinion expressed by Pajvančić (2009), "the constitution guarantees the inviolability of human life. Respecting European standards of human rights, the Constitution stipulates that there is no death penalty in the punishment system in Serbia. Directly related to the guarantee of the right to life is the prohibition of cloning of human beings (paragraph 3), and in a broader sense, the constitutional provisions that guarantee the freedom to decide on childbirth (Article 63, paragraph 1) and guarantee the right to legal capacity (Article 37, paragraph 1). The right to life belongs to the group of absolutely protected rights (Article 202, paragraph 4), and as such cannot be limited in any way, even during extraordinary circumstances or war" (pp. 36-37).

Article 25 of the Constitution regulates the right – Inviolability of physical and psychological integrity. According to these provisions, "physical and psychological integrity is inviolable. No one may be subjected to torture, inhuman or degrading treatment or punishment, or subjected to medical or scientific experiments without his freely given consent." According to the opinion expressed by Pajvančić (2009), "the Constitution guarantees the inviolability of the physical and psychological integrity of the person as a general norm, and it is specified in several special constitutional provisions. The content that includes the general constitutional norm on the inviolability of physical and psychological integrity is defined more closely by the provisions

on the prohibition of torture, inhuman or degrading treatment or punishment (paragraph 2); prohibition of subjecting to medical and scientific experiments without the freely given consent of the individual (paragraph 2 *in fine*). The inviolability of physical and mental integrity is more closely defined by the prohibition of slavery or keeping an individual in a position similar to slavery (Article 26, paragraph 1); the prohibition of human trafficking (Article 26, paragraph 2), as well as the prohibition of forced labor (Article 26, paragraph 3), with which the Constitution equates the sexual or economic exploitation of persons who are in a disadvantageous position (Article 26, paragraph 3 *in fine*), so the prohibition of forced labor also includes such cases. Some rights belonging to this group have the status of absolutely protected rights, such as the right to inviolability of physical and psychological integrity, and the prohibition of slavery and positions similar to slavery (Article 202, paragraph 4). Deviation from these rights is not allowed even in war or during a state of emergency" (p. 37).

Article 27 of the Constitution regulates the Right to freedom and security. According to the provisions of this article, "everyone has the right to personal freedom and security. Deprivation of liberty is permitted only for the reasons and in the procedure provided for by law. A person who has been deprived of his liberty by a state authority is immediately informed, in a language he understands, of the reasons for the deprivation of his liberty, of the charges brought against him, as well as of his rights, and has the right to inform the person of his choice about his deprivation of liberty without delay. Anyone who is deprived of liberty has the right to appeal to the court, which is obliged to immediately decide on the legality of the deprivation of liberty and to order release if the deprivation of liberty was illegal. A sentence that includes deprivation of liberty can only be imposed by a court." According to the opinion expressed by Pajvančić (2009), "the Constitution guarantees every individual the right to freedom and security (personal freedom) as one of the basic rights and establishes several special guarantees whose purpose is to protect this right. Special guarantees refer to the explicit prescription of conditions under which the personal freedom of an individual can be limited; regulating the procedure of deprivation of liberty; determination of the body competent to decide on deprivation of liberty and, finally, guaranteeing certain rights that an individual can use in proceedings before state authorities when his personal freedom is limited. Among the special rights enjoyed by an individual at the moment of deprivation of liberty are: the right to immediate action ("immediately" as the Constitution states); the right to be informed about the reasons for deprivation of liberty; the right to be informed of the

charge against him; the right to have the reasons for the deprivation of liberty and the charge against him communicated in a language he understands; the right to inform a person of his choice about the deprivation of liberty; the right to be informed of his rights; the right to appeal to the court due to deprivation of liberty; the court's obligation to decide on the appeal in an urgent procedure" (p. 38).

Articles 28 and 29 of the Constitution regulate the rights of Dealing with a person deprived of liberty and Supplementary rights in case of deprivation of liberty without a court decision. According to Article 28, "a person deprived of liberty must be treated humanely and with respect for the dignity of his person. Any violence against a person deprived of liberty is prohibited. Coercion of statements is prohibited." According to Article 29, "a person deprived of his liberty without a court decision is immediately informed that he has the right not to declare anything and the right not to be heard without the presence of a lawyer of his own choosing or a lawyer who will provide him with free legal aid if he cannot pay for it." A person deprived of liberty without a court decision must be handed over to the competent court without delay, and within 48 hours at the latest, otherwise he will be released." According to the opinion presented by Pajvančić (2009), "deprivation of liberty is an act (factual act) of limiting personal freedom as one of the most important individual freedoms. This is the reason why the Constitution specifically regulates the relationship of state authorities when undertaking activities that limit personal freedom, as well as their treatment of a person deprived of their freedom. The constitutional regulation on dealing with a person deprived of liberty includes two express constitutional prohibitions. One refers to the use of any type of violence (physical, psychological) against a person deprived of liberty (paragraph 2). The second prohibition refers to coercion of statements (paragraph 3). It can be noted that the Constitution does not sanction the violation of these constitutional prohibitions, and does not expressly authorize the legislator to prescribe sanctions in case of their violation. The rules on dealing with a person deprived of liberty, as well as the prohibition of certain actions against a person deprived of liberty, belong to the group of absolutely protected rights. Deviation from these rights is not allowed even in the case of war or imminent threat of war (Article 202, paragraph 4)" (p. 40). Also, regarding the provisions from Article 29, the same author states that "the rights of persons deprived of their liberty are specifically regulated in the case where the general rule that deprivation of liberty is permitted only by court decision is violated, that is, in a situation where some other authority (police) directly limits the personal freedom of the individual. In that case, the person

deprived of liberty has additional rights, which include: the right not to declare anything (paragraph 1); the right to be heard in the presence of a defense attorney (paragraph 1); the right to choose a defense counsel (paragraph 1); the right to a defense attorney who will provide legal assistance free of charge if, due to his financial situation, he cannot pay for the assistance of a defense attorney (paragraph 1); the right to be brought before the competent court without delay, and within 48 hours at the latest (paragraph 2); the right to be released if custody is not ordered based on the decision of the competent court (paragraph 2)" (Pajvančić, 2009, pp. 40-41).

Finally, Articles 30 and 31 of the Constitution regulate the rights regarding Detention and Duration of Detention. Namely, according to the provisions of Article 30, "a person who is reasonably suspected of having committed a criminal offense may be detained only on the basis of a court decision, if the detention is necessary for the conduct of criminal proceedings. If he was not heard during the decision on detention or if the decision on detention was not carried out immediately after it was made, the detained person must be brought before the competent court within 48 hours of the deprivation of liberty, which then decides on detention again. The written and reasoned decision of the court on detention is delivered to the detainee no later than 12 hours after the detention. The decision on the appeal against detention is made by the court and delivered to the detainee within 48 hours". Then, Article 31 stipulates that "the court reduces the duration of detention to the shortest necessary time, taking into account the reasons for detention. The detention determined by the decision of the first-instance court lasts for a maximum of three months during the investigation, and the higher court can, in accordance with the law, extend it for another three months. If no indictment is filed by the end of this time, the defendant is released. After the indictment is filed, the court reduces the duration of detention to the shortest necessary time, in accordance with the law. The detainee is released to defend himself from freedom as soon as the reasons for which the detention was determined cease."

5. Provisions of the criminal legislation of the Republic of Serbia on dealing with persons in custody

Since the defendant "is the main subject of criminal proceedings and a party in criminal proceedings with the presumption of innocence, the legislator specifically regulated the procedure with detained persons, i.e. it specifically regulated the position of the defendant in custody" (Milošević & Stevanović,

1997, p. 308). Based on the provisions of Articles 28 and 29 of the Constitution of the Republic of Serbia (2006), the criminal procedure legislation has regulated in detail the matter of dealing with persons in custody. A more detailed legal regulation of the rules "for dealing with detainees is necessary because in every democratic state a clear mechanism for controlling the way these persons are treated must be built and constantly applied (Matijašević Obradović, 2015, p. 264).

The Code of Criminal Procedure (2011) prescribes special rules for dealing with detainees in articles 217-222. These provisions are certainly harmonized with the provisions of the Law on the Execution of Criminal Sanctions (2014), which in Article 6, paragraph 1 stipulates that "a criminal sanction shall be executed in a way that guarantees respect for the dignity of the person to whom it is carried out." According to what was said above, the provisions of the criminal procedure legislation of Serbia regulated the following rules, regarding the rules of dealing with persons deprived of their liberty:

"1. The basic rule is that during detention, the personality and dignity of the detainee must not be insulted;

2. The rule on the application of only necessary restrictions on the rights of detained persons, which means that only those restrictions that are necessary to prevent: 2.1.) escape, 2.2) inciting other persons to destroy, hide, change or falsify evidence can be applied to the detainee or traces of the criminal offense and 2.3.) direct or indirect contacts of detainees aimed at influencing witnesses, accomplices or concealers;

3. Rule on separation of certain detained persons. This rule applies to the following situations: 3.1.) persons of different genders will not be imprisoned in the same room, 3.2.) as a rule, persons suspected of having participated in the same criminal act will not be placed in the same room, 3.3.) as a rule, persons who are serving a criminal sanction consisting of deprivation of liberty will not be accommodated in the same room with persons in custody, 3.4.) persons for whom there is reasonable suspicion that they have committed a criminal offense will not, if possible, be placed in the same room place in the same room with other persons deprived of their liberty who could be adversely affected;

4. Rules relating to certain rights and obligations of detained persons. In this sense, the rights of the detainee are: 4.1.) the detainee has the right to a continuous night rest every day for at least eight hours, 4.2.) the detainee will be provided with exercisein the open air for at least two hours a day, 4.3.) the detainees have the right a.) to wear their own clothes, b.) to use their own

bedding and c.) to acquire and use food, books, professional publications, press, writing and drawing utensils and other things that correspond to their regular needs at their own expense, except for items suitable for causing injury, damage to health or preparation for escape. 4.4.) if the detainee requests it, the judge for the preliminary proceedings, i.e. the president of the chamber, with the consent of the director of the institution, may allow him to work within the institution on jobs that correspond to his mental and physical characteristics, provided that this is not detrimental to the conduct of the proceedings. For this work, the detainee is entitled to compensation determined by the director of the institution. In addition to the rights, the Code also prescribes the obligation of the detainee to perform work necessary to maintain the cleanliness of the room in which he is staying.

5. Rules on the communication of detained persons with other persons. Within this rule, the Code contains provisions on visits to detainees and provisions on correspondence with detainees. The rules related to visits to the detainee are as follows: 5.1.) with the approval of the judge for the preliminary proceedings and under his supervision or the supervision of the person he designates, within the limits of the institution's house rules, the detainee may be visited by his close relatives, and at his request – by a doctor and other persons. Certain visits may be prohibited if it is likely that they could interfere with the investigation. 5.2.) the diplomatic-consular representative of the state of which the detainee is a citizen, i.e. the representative of an authorized international organization of a public law character, if it is a refugee or a stateless person, have the right to, in accordance with the confirmed international agreement and with the knowledge of the judge for the preliminary proceedings, visit without supervisors talk to the detainee. 5.3.) the right to visit detained persons unhindered and to talk to them without the presence of other persons is guaranteed to: a.) defense counsel, b.) Protector of Citizens and c.) the National Assembly's Commission for Controlling the Execution of Criminal Sanctions, in accordance with the law, as well as g.) a representative of an authorized international organization of public law character, in accordance with a confirmed international agreement. The rules related to correspondence with the detainee are as follows: 5.4.) The detainee may correspond with persons outside the institution with the knowledge and under the supervision of the judge for the preliminary proceedings. The judge for the preliminary proceedingsmay prohibit the sending and receiving of letters and other correspondence if it is likely to interfere with the investigation.

6. Rule on disciplinary responsibility of detained persons. According to the provisions of the Code, for disciplinary offenses committed by detainees,

the judge for preliminary proceedings, or the president of the chamber, can impose a disciplinary punishment of restriction of visits. This limitation does not apply to defense counsel. A detainee cannot be punished 1.) before he is informed of the disciplinary offense he is charged with, 2.) before he has been given the opportunity to present his defense and 3.) before the court has thoroughly examined the case.

7. Rule on judicial supervision of detainees. According to the provisions of the Code, the supervision of detainees is carried out by a judge for the execution of criminal sanctions or a judge designated by the president of the court. The judge authorized to supervise the detainees is obliged to visit the detainees at least once every 15 days and, if deemed necessary, to find out how the detainees are fed, how they are supplied with other needs and how they are treated, even without the presence of the employees of the institution if deemed necessary. The judge is obliged to immediately inform the Ministry responsible for judicial affairs, as well as the Protector of Citizens, of the irregularities observed during the visit to the institute."

6. Conclusion

When considering the position and rights of persons deprived of their liberty, we are not talking about any special, specific rights and rules that are inherent to the status of a detainee (or an arrested person), but primarily about the realization of the basic guaranteed rights that every citizen should have. The Constitution of the Republic of Serbia guarantees respect for human rights and freedoms to all its citizens, and this is also confirmed by certain laws.

From a historical point of view, from the creation of the first states until today, bearing in mind both the abstraction of philosophical views and the practical circumstances that man has encountered throughout history, the concept of human rights has been the basis of the study of all problems, phenomena and concepts of the entire society. The Constitution of the Republic of Serbia (2006) contains a large number of provisions on human rights and freedoms. The Constitution guarantees all three generations of rights: civil and political rights (the first generation of rights), then economic, social and cultural rights (the second generation of rights), and the rights of the so-called third generation rights.

Articles 28 and 29 of the Constitution regulate the rights – Dealing with a person deprived of liberty and Supplementary rights in case of deprivation of liberty without a court decision. Basing the provisions on the aforementioned articles of the Constitution, the criminal procedure legislation has regulated in

detail the matter of dealing with persons in custody. This primarily refers to the provisions of the Code of Criminal Procedure (2011) and the Law on the Execution of Criminal Sanctions (2014).

Summarizing everything that has been said so far, the importance of the structure and content of the provisions of the Constitution of the Republic of Serbia (2006) is emphasized, especially in the domain of the principles and content of all guaranteed human and minority rights and freedoms, and it can certainly be said that the concept of the rule of law arose from the understanding that it is not enough for the state power to be limited by law, it is also important that the law is valid in its content, because then it is a solid foundation of just and moral behavior.

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ZAŠTITA LJUDSKIH I MANJINSKIH PRAVA U USTAVU SRBIJE SA OSVRTOM NA ZAKONSKE ODREDBE O POSTUPANJU SA LICIMA KOJA SE NALAZE U PRITVORU

REZIME: Ustav Republike Srbije sadrži veliki broj odredbi o ljudskim pravima i slobodama. Ustav garantuje sve tri generacije prava. U članovima 28 i 29 Ustava uređena su prava – Postupanje s licem lišenim slobode i Dopunska prava u slučaju lišenja slobode bez odluke suda. Temeljeći odredbe na pomenutim članovima Ustava, krivičnoprocesno zakonodavstvo je detaljno uredilo materiju postupanja sa licima koja se nalaze u pritvoru. Nakon detaljne analize pravila postupanja prema licima koja se nalaze u pritvoru, zaključuje se da se ne radi ni o kakvim specifičnim pravima, niti pravilima, već samo o ostvarivanju osnovnih

zagarantovanih prava koja bi svaki građanin trebalo da uživa, bez obzira u kom se statusu nalazio. Imajući u vidu temu, u radu je analiziran razvoj i pojmovno određenje ljudskih i manjinskih prava, zatim, analizirale su se neke karakteristične odredbe Ustava vezane za temu rada, a potom je učinjen osvrt na zakonske odredbe u Srbiji o postupanju sa licima koja se nalaze u pritvoru, a koje svoje utemeljenje imaju upravo u odredbama Ustava.

***Ključne reči**: Ustav, ljudska prava i slobode, prava nacionalnih manjina, krivičnoprocesno zakonodavstvo, postupanje sa pritvorenicima.*

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CRIMINAL OFFENSE OF ENVIRONMENTAL POLLUTION IN THE CRIMINAL LEGISLATION OF THE REPUBLIC OF SERBIA AND THE REPUBLIC OF CROATIA

ABSTRACT: Undoubtedly, one of the leading movements at the global level in the past few decades was the movement for the global and intensive protection of the human environment, that is, the affirmation of the right of man to a healthy environment, as a distinct right. Bearing in mind the importance of a healthy environment and the importance of its protection, which has grown from a social need into a legal imperative, it is certainly justified to establish the environment as an independent and primary collective object of protection within the domestic criminal legislation. Taking into account the tendencies on the international and comparative level regarding the regulation of the criminal law protection of the environment, the domestic legislator dedicates an entire chapter of the Criminal Code precisely to incriminations that have the environment as an object of protection, in various forms. As the first offense provided for in Chapter 24 i.e., Criminal offenses against the environment, the legislator defines the general and most significant criminal offense from the group of criminal offenses against the environment, namely, Environmental pollution. This paper is dedicated to the analysis of this criminal offense in domestic criminal legislation, with reference to individual solutions contained in the legislation of the Republic of Croatia and pointing out their differences.

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Keywords: *criminal offense of environmental pollution, criminal protection, Criminal Code, criminal offenses against the environment.*

1. Introductory remarks

Environmental protection has been in the center of attention of the international community, both at the universal and regional level, for some time now. As early as 1998, this issue was on the list of priorities of the international community, and since then, ie. since the adoption of the Convention of the Council of Europe on the criminal protection of the environment on November 4 (which has not entered into force), international legal documents have been adopted and adopted with the aim of promoting and protecting the environment (Stojanović & Delić, 2017, p. 203).

On the domestic front, the Constitution of the Republic of Serbia ambitiously proclaims that "*Everyone has the right to a healthy environment and timely and complete information about its condition." Everyone, especially the Republic of Serbia and the autonomous province, is responsible for environmental protection. Everyone is obliged to preserve and improve the environment.*"(Constitution, 2006, article 7). The creator of the Constitution was certainly aware of the importance of a healthy environment; not only for man, as an individual, but also for the state and society itself. Therefore, the constitutional maker proclaims the broad right of every individual to a healthy environment, as well as to be timely and fully informed about its condition. On the other hand, correlative to this right of people, the constitution maker establishes the obligation of everyone, especially the Republic and the autonomous province, to protect and preserve the environment – and which obligation, we believe, has a positive and negative aspect: the Republic and the autonomous province have a negative obligation – to refrain from any action that threatens, destroys, changes or otherwise damages the environment, while there is also a positive obligation to actively deter and discourage others from endangering, changing, destroying or causing other damage to the environment through legislative and administrative measures. In our opinion, the positive obligation would also include the obligation of state authorities to do everything reasonably possible to discover the identity of the perpetrator in the event of an environmental violation and to carry out criminal proceedings.

In this sense, the domestic legislator regulates the issue of environmental protection with many legal regulations – starting from the general regulation of the Law on Environmental Protection, to partial protection that is achieved through other legal regulations. Certainly, one of the strongest protections that

the state can provide is criminal protection. Bearing in mind the importance of a healthy environment for an individual, as well as society as a whole, the intervention of the legislatorwith this *ultima ratio* is not only justified, but also necessary. In this sense, while in most other areas of criminal law protection, there has recently been an effort to decriminalize certain behaviors, or to narrow the criminogenic zone by prescribing additional conditions under which someone can be punished, in the area of criminal law environmental protection the situation is different (Drakić, 2009, p. 222).Therefore, the crime of Environmental pollution has existed in our criminal legislation for some time.

This paper is dedicated to the analysis of the criminal offense of environmental pollution in the domestic criminal legislation, with reference to the individual solutions contained in the legislation of the Republic of Croatia and pointing out their differences, while relying on and using the normative, comparative and historical law method, with the logical rules of induction and deduction.

2. General criminal offenses against the environment and their legislation

Drakić (2009) correctly notes that the "increasingly intense and reckless destruction of the environment has forced the domestic legislator, as well as other legislators and the international community, to apply a more radical approach to environmental protection, and to engage the most repressive branch to a greater extent than before rights – criminal law, in an effort to ensure environmental protection" (p. 223).

Up until about fifty years ago, in the comparative legislations, there were almost no criminal acts that primarily protected the environment, but the environment was protected by default along with some other – primary – object of protection. Only with the development of awareness of the importance of a healthy environment and its endangerment, criminal acts arise which, as the primary object, aim to protect the environment (Dragojlović, Pašić & Milošević, 2018, p. 54).

In the domestic criminal law, until the separation of the special criminal offense by which it is provided protection of the environment as such came in 1977 with the entry into the force of the Criminal Code of the Socialist Republic of Serbia, which was applied until the entry intoforce of the current Criminal Code of the Republic of Serbia from 2006 (Stojanović, 2017, p. 828). It should be pointed out that just before the adoption of this of the

penal code, and after the adoption of the Constitution from 1974, which expressly establishes the right to a healthy natural environment,opportunities for criminal law regulation have been created, i.e. it has been established that there is a need for regulation special incriminations that would provide criminal protection to the environment.[1]

The current legislator was reasonably active when prescribing criminal offenses that have a (healthy) environment as the primary object of protection, so inin the current Criminal Code of Serbia, there are eighteen criminal offenses against the environment, which are found in Chapter D twenty-four of the Code[2], and which criminal offenses include: Environmental pollution (Article 260), failure to take environmental protection measures (Art 261), illegal construction and commissioning of facilities and equipment that pollute the environment (Art 262), damage to facilities and devices for environmental protection (Art 263), damage to the environment (Art 264), destruction, damage and export of protected natural property abroad (Art 265), bringing dangerous substances into Serbia, unauthorized processing, disposal and storage of dangerous substances (Article 266), illegal construction of nuclear facilities (Art 267), violation of the right to information about the state of the environment (Art 268), killing and torturing animals (Art 269), transmission of infectious diseases in animals and plants (Art 270), negligent provision of veterinary assistance (Art 271), production of harmful means for the treatment of animals (Art 272), contamination of food and water for consumption, i.e. feeding animals (Art 273), devastation of forests (Art 274), forest theft (Art 275), illegal hunting (Art 276) and illegal fishing (Art 277). Already from the very names of the criminal acts, we can determine their specific protective objects, so it can be concluded that the domestic legislator has cast a wide net of criminal environmental protection. From the incriminations themselves, it can be clearly determined that the object of criminal protection is the environment itself, or more precisely, the human right to a preserved environment (Stojanović, 2021, p. 869).

[1] Certainly, the Constitution, as the highest legal act, regulates the most important human rights, including the right to a healthy environment. However, we do not believe that in order to prescribe every criminal incrimination in the area of criminal substantive legislation, it would be necessary to have previously prescribed a constitutional norm that would refer to a given incrimination. For an interesting discussion on the binding and limitation of the criminal legislator by the constitution, see: (Stojanović, 2008, p. 7.)

[2] In addition, some criminal acts that endanger or injure the environment are also included in secondary criminal legislation. Thus, there is one criminal offense in the Law on Production and Trafficking of Toxic Substances, three such crimes in the Law on Water, and three such criminal offenses in the Law on Mining.

In terms of the criminal incriminations themselves, in general, there are two approaches in incriminating certain behaviors, the so-called. "environmental crime" as criminal acts. On the one hand, there are criminal acts that have as their consequence an abstract danger to the environment, and for which a concrete danger or injury to the environment is not required for the criminal law reaction to occur, but behavior that regularly, as a rule, leads to such consequences, without waiting for them to occur in a specific case. On the other side, there are criminal acts that result in injury or specific endangerment of an "ecological asset". While these consequences must be proven in criminal proceedings, abstract danger is not proven, it is irrefutably assumed, precisely because the action taken is a typical carrier of environmental danger (Drakić, 2009, p. 222).

Before proceeding to the consideration of individual incriminations, it should be noted that, althoughthe environment is a legal good of the community (Drakić, 2009, p. 223), the object of protection of this group, the so-called "ecological" crimes must not be understood in a broader, non-substantial sense, but in the sense of different ecological media (such as water, soil, air) and their particular manifestations (flora and fauna) (similarly Stojanović, 2021, p. 872). As we will see, the criminal offense of environmental pollution from Article 260 of the Criminal Code refers explicitly to the environmental media of air, water and soil (Varađanin, & Stanković, 2022).

3. Criminal offense of environmental pollution in domestic legislation

From an ideological point of view, the crime of environmental pollution would represent a fundamental and basic crime against the environment. This prescribed crime protects the fundamental human right to a healthy and preserved natural environment, which, as we have already pointed out, has been raised to the level of a constitutionally guaranteed human right, all with the aim of ensuring humane and healthy living conditions for current and future generations.

However, no matter how noble the reasons the legislator was guided by when prescribing the act and how much in line with the global trend, (Stojanović, 2017, p. 830 et seq.) points out that despite the long existence of this act in our criminal legislation (since 1977), it is extremely rarely applied in practice.[3]

[3] Samardžić (2011) points out that, while conducting research, he came to the conclusion that no proceedings for this criminal offense before the court in Novi Sad have been legally concluded (p. 751).

When we talk about the incrimination itself from Article 260 of the Criminal Code, the basic form of the offense is committed by anyone "who, in violation of regulations on the protection, preservation and improvement of the environment, pollutes the air, water or soil to a greater extent or over a wider area." There are three elements, therefore, that must be cumulatively fulfilled for the existence of this criminal act. First, the condition is that there has been air, water or soil pollution. Secondly, it is necessary that such pollution of some of the eco-media occurred by violating some regulation on protection, preservation and improvement of the environment. Finally, the third condition is that the pollution of air, water or land has occurred to a greater extent or over a wider area.

a) The act of execution as an element of the criminal act

The very act of committing this criminal offense consists in undertaking some activity that results in air, water or soil pollution. Thus, Criminal Code does not describe actions that can lead to the above consequences (Drakić, 2009; Vučković, 2014). On the contrary, this criminal law norm remains of a blanket in character, leaving the element of the action to be determined by some other regulation. That is why any human activity that, in itself, is capable of polluting one of the eco -media from Article 260 of the of the Criminal Code can be considered as the very act of committing this criminal act.[4] Stojanović (2021)"clearly defines that it is about the so-called consequent action – that is, any action that can cause the consequence of this act, which is reflected in the pollution of air, water or land to a greater extent or in a wider area, is to be considered an action of execution. Bearing in mind the importance of the protective object, thanks to the prescribed range of imprisonment (up to five years) for the basic form of the crime, the very attempt of any premeditated form of this criminal offense is punishable, according to the general rule on punishment for attempted criminal offense from Article 30 of the Criminal Code" (p. 872).

Bearing in mind the absolute impossibility of the legislator to determine in advance the catalog of possible actions for the execution of this criminal offense, the legislator's approach to define the criminal offense itself as a blanket offense, referring to the relevant regulations on protection and environmental protection measures, is completely sleepless.

[4] Drakić (2009) cites as examples the release of harmful waste water, the burning of dangerous substances that pollute the air, the pouring into water, a stream or a lake, that is, onto the ground, of toxic chemicals or other substances that thus make them dangerous for human life or health, ie for animals or plants. While Lazarevic (2006) states the failure to take the necessary protective measures against pollution or to install appropriate purification devices (p. 682).

Nevertheless, from the aspect of defining and differentiating the criminal offense, it is important to emphasize that if any of the actions causes the pollution of **drinking** water, there will not be this general crime from Article 260 of the Criminal Code, but a special criminal offense of "Polluting drinking water and foodstuffs" which falls under into the group of criminal acts against human health, due to the application of the specialty principle.

Defining the concept of the action *of pollution* depends to a certain extent on which eco-medium is involved in the specific case. Stojanović (2021) believes that, generally speaking, it is always about certain harmful changes that occur in the mentioned eco-media, i.e. in relation to the plant and animal world (p. 872). Drakić (2009) in principle accepting Stojanović's position, under the pollution of water, air or soil, in the sense of the consequences of the crime in question, includes any artificial change in the natural characteristics of the mentioned eco -media that can threaten the psycho-physical integrity of a person or predict harm for plant or animal life (p. 224).[5]

With regard to the actual damage to the plant or animal life in terms of the incrimination in question, this consequence could not be caused by e.g. excessive exploitation of the land or its " burning ", because this incrimination protects the mentioned eco -media qualitatively, not "quantitatively" (Drakić, 2009, p. 225).

It is necessary to emphasize that the action of execution does not have to be undertaken once, but the action of execution of this part can also be understood as onecontinuous activity, which consists of several individual actions that,each by itself, they are not capable of causing the consequence of the act, providedthat they are in their cumulative resulted in air pollution, water or soil in the aforementioned sense (Stojanović, 2017, p. 830).

b) The blanket nature of the provision from Article 270 of the Criminal Code

In order for us to be able to talk about this part in general, it is necessary that the pollution of air, water or land happened to someonecaused by human action in violation of regulations on protection, preservation and improvementenvironment, which results from a simple linguistic interpretation of this provision.

[5] Drakić goes a step further and states that he deliberately used the term "psycho-physical integrity of a person" and not "health", so as not to get into a situation where whenever this criminal offense is involved, medical expertise is ordered and determined. In this regard, the medical concept of illness or health is not relevant for assessing whether a consequence has occurred.

As a general consequence of the trend of hyperinflation of legal regulations, in our legal system there are a large number of legal and bylawregulations that aim to ensureenvironmental protection, that is, to preserve and improve it.

In order to those goals have been achieved, these regulations, among other things, require certain personsto behave in a certain way in certain situations, or prohibitsall or only some persons to undertake certain activitieswhich oppose the interests of protection, preservation and improvement of the environment (Drakić, 2009, p. 225; similarly Stojanović, 2021, pp. 871-872).

In this regard, violation of regulations, in terms of this condition, can be done as followsundertaking a prohibited activity, as well as not undertaking an activity which had to be undertaken. Therefore, it is possible to commit the act passively, i.e. by refraining from doing it, i.e. by omission. This model of criminal responsibility, of course, implied an obligation prescribed by law, the omission of which would constitute a violation of the regulations, and, with the occurrence of the consequences, there would be a criminal act. It should be pointed out that, by the very nature of things, an attempt of this form of criminal offense is not possible.

In any case, in order to determine the existence of this criminal offense, it is necessary to first consult the corresponding non-criminal, administrative law regulations.[6]This is a feature of most blanket legal norms.

In this sense, it should be pointed out that the current Law on Environmental Protection gives the concept of environmental pollution as the introduction of polluting materials or energy into the environment, caused by human activity or natural processes, which has or may have harmful consequences on the quality of the environment and human health (Law on Environmental Protection, 2004, article 3, point 11). However, for the purposes of criminal law, i.e. the incrimination of any conduct, and even for low standards of blanket norms, this provision is too broad, i.e. too general, to be directly applicable for the purposes of the criminal offense under Article 260 of the Criminal Code. For these reasons, various obligations and requirements are prescribed in various,

[6] Stojanović (2021) "points out that the dependence of the existence of the crime in question on the corresponding non-criminal regulations is not as great as it seems at first glance, because when the other elements of the criminal offense have been realized (pollution of air, water or land on a larger scale or in a wider area) as a rule, the condition regarding the violation of regulations on protection, preservation and improvement of the environment has been met" (pp. 871-873). Drakić (2009) "takes a somewhat different position and believes that the violation of administrative law itself does not always represent an element of the existence of a criminal act, but an element of its illegality". We believe that both positions are partly correct, and that one should certainly not approach generalizations, nor draw conclusions about the fulfillment of one element just because of the existence of other elements of the crime (p. 225).

larger numbers of other legal regulations from the administrative law field (e.g. the Water Act), the violation of which would fulfill the elements of the offense from Article 260 of the Criminal Code (similarly Stojanović, 2021, p. 872).

To this approach, as to most other blanket criminal norms, a general remark can be made that the nature of the act, i.e. the act of execution, is set too broadly due to the fact of the appearance of hyperinflation of legal regulations in various areas, so it is sometimes unrealistic to expect that everyone is familiar with their obligations and orders issued to him by certain legal texts.

v) Standards of "larger measure" and "wider space" as a qualitative condition of the criminal offense from Article 260 Criminal Code

Finally, for the existence of a criminal offense it is necessary that the pollution of air, water or land occurred to a **greater extent** or in **a wider area**. The meaning of this condition is to distinguish the criminal offense in question from corresponding misdemeanors or economic offenses that also result in air, water or soil pollution (Stojanović, 2017, pp. 831-832). Thus, applying the rule *of argumentum a contrario*, if there was no pollution of the mentioned eco-media to a greater extent or in a wider area, there is a misdemeanor or an economic offense – and vice versa (Drakić, 2009, p. 227).

The legal wording of this feature is rather imprecise. It cannot be concluded from it in advance when this condition is fulfilled. The legislator left it to judicial practice to determine the criteria by which the appropriate conclusion will be reached (Drakić, 2009, p. 228; Stojanović, 2021, pp. 872-873).

Nevertheless, it can generally be said that it is a question of such pollution which "to a greater extent exceeds the limits of the tolerant concentration or which, although within the permissible limits,covers large areas" (Lazarević, 2006, p. 682). The most important orientation criteria for determining these imprecise concepts are certainly the limit values of the maximum permitted pollution of certain eco-media, which are provided by administrative regulations. In any case, ecological and not economic criteria and standards must be applied here (Drakić , 2009, p. 229).

Generally speaking, legal standards in criminal law, as necessary as they may be at times, represent a significant potential danger from the aspect of the *nullum crimen sine lege*principle. Although it cannot be disputed that the prescription by law existed, that regulation must also be of appropriate quality, i.e. it would have to be such that a reasonable and average person can conclude which and what kind of behavior is prescribed as a criminal offense, i.e. a certain degree of certainty is required, in the sense guarantees of legal certainty. Legal standards often lead to disruptions in that relationship.

The criminal offense from Article 260 of the Criminal Code is therefore committed when the act or omission causes air, water or soil pollution to a greater extent or over a wider area, in violation of regulations on the protection, preservation and improvement of the environment. The perpetrator of this act can be, both officially, and any other person.

The act can be committed intentionally or negligently. For deliberate execution of the act, the perpetrator can be sentenced to six months to five years in prison and a fine, and for negligence – a fine or imprisonment of up to one year.

This crime also has its more serious form. It differs from the basic form only in that its existence requires the occurrence of a more serious consequence, which is reflected in the fact that "there has been destruction or damage to the plant or animal world on a large scale or to the pollution of the environment to such an extent that for its removal requires a long time or high costs" (Criminal Code, 2005, article 260).

Even with this form of the crime, the Code calls into question the consistent implementation of the principle of legality with its vague and imprecise wording.[7]Therefore, here, as with the basic form, it is left to judicial practice to establish the appropriate criteria and to use them to arrive at an answer to the question of what is meant by the legal term "large scale", i.e., the terms "longer time" and "large costs". The interpretation of the first qualifying circumstance is particularly problematic (Drakić, 2009, p. 227).

Namely, the answer to the question, whether there has been destruction or damage to plant or animal life on a large scale, our judicial practice binds to a certain amount of money. Thus, if the damage occurred, when expressed in money, exceeds a certain amount of money expressed in dinars, this condition is met – and vice versa (Stojanović, 2006, p. 602).

Drakić (2009) strongly objects to this interpretation. Namely, ecological good is not something that can be expressed in money, so even the damage it suffered cannot be adequately expressed in that way. In this regard, there are endangered plants and animal species, the slightest damage or destruction of which would represent an irreparable loss for humanity, which loss cannot be expressed monetarily. Furthermore, there are some plants or animal species that have no market value at all (e.g. moss) or that value is so low that it would be necessary to almost exterminate certain animal or plant species in a certain eco-medium in order to apply the relevant legal provision, which

[7] In other words, when prescribing certain incriminations, the legislator should avoid using unspecified norms, which, however, exist both in the basic and in the more serious form of the criminal offense of environmental pollution.

is practically impossible. All this speaks in favor of the fact that the current practice of tying the relevant qualifying circumstance to a monetary amount must be abandoned. The amount of damage expressed in money, when and if it is possible to carry out such a transfer in an individual case, is certainly an important parameter when assessing whether this condition is met, but not the only indicator on which the final judgment on this depends.

When it comes to the other two qualifying circumstances, that is, that it takes a long time to remediate the pollution, or that it requires large costs, the situation is less delicate. Namely, "longer time" and "large costs" are terms that can be conceptually defined and meaningfully determined in the context of this incrimination, so here it is possible for judicial case law to take a principled position on certain quantification values that, if exceeded, indicate a special the social danger of environmental pollution (Stojanović, 2021, pp. 871-874). Nevertheless, here too, one should beware of "patternism" in solving individual cases, because each event is a "story for itself", and during this assessment, all the circumstances of the specific case must be taken into account (Drakić, 2009, p. 228).

It is necessary to point out that in order to properly examine the existence of all the above-mentioned qualifying circumstances, it is necessary to determine the appropriate expertise, whereby the duty of the expert is to provide the court with useful data from his profession that will help him reach a final conclusion on whether it is a more severe form of the subject matter of a criminal offense or it is not the case. Therefore, the task of the expert is to present the facts to the court from the field for which he is the only expert, and the legal evaluation of the factual material submitted in this way is performed by the judge, who is the only one authorized to declare whether there was destruction or damage of plant or animal life "on a large scale", or the environment is so polluted that it takes a "long time" or "high cost" to remove the pollution. Finally, it should be noted that the assessment of the mentioned legal standards is given by the court, given the fact that it is a legal issue. The expert must not go into this issue.

4. Review of the prescription of criminal protection of the environment in the criminal legislation of the Republic of Croatia

Just as in other branches of law, i.e. the entire legal system, there is a general rule, so in modern criminal legislation, albeit to a lesser extent, there is the adoption of legal solutions contained in foreign legislation, and especially

in the national law of the member states of the European Union, as well as the rules contained in the Community law of the Union itself.

For this reason, it is necessary to provide an overview of solutions related to the criminal law protection of the environment in other countries as well. At this point, we have decided to give an overview of the regulation of this matter in the penal legislation of the Republic of Croatia, as the youngest member of the European Union, and as the state of the Union which, according to its legal system, is closest to the Serbian legislation.

The Republic of Croatia is bound by over 50 international sources (Lončarić-Horvat et al., 2003, pp. 212-220) in the form of conventions, additional protocols to those conventions, multilateral and bilateral agreements that protect the air, ozone layer, water and sea, soil, animals, regulate trade waste and establish standards that must be respected by all signatory states, while their mutual cooperation is also regulated under the auspices of common interest for effective environmental protection.

In Article 3, the Croatian Constitution defines nature and the human environment as the highest values of the constitutional order, and then in Article 70 it states: "Everyone has the right to a healthy life. The state ensures the conditions for a healthy environment. Everyone is obliged, within the scope of their powers and activities , to devote special care to the protection of human health, nature and the human environment." This proclaimed the right of everyone to a healthy life, but at the same time established the duty of everyone, starting with the state, to actively work on environmental protection.

Pavišić, Grozdanić &Veić (2007) "point out that in the Republic of Croatia, all criminal offenses against the environment are systematized in the Criminal Code, in chapter twenty under the title: *Criminal offenses against the environment*" (p. 590-597). Several different criminal offenses are systematized here, of which the concept, characteristics and features of only the most significant offenses of this type will be presented.

4.1. Basic criminal offense – Pollution of the environment

In contrast to the positive domestic criminal legislation, the current Croatian Criminal Code defines the basic environmental crime – environmental pollution – provided for in Article 193 of the Criminal Code of the Republic of Croatia, much more widely. This offense is committed by a person who *"contrary to the regulations releases, introduces or discharges a quantity of substances or ionizing radiation into the air, soil, subsoil, water or sea,* ***which may*** *permanently or to a considerable extent endanger their quality or* ***may***

be *endangered to a considerable extent or in a wider area animals, plants or fungi, or the life or health of people may be endangered" (underlined by the author)*. Paragraph two covers the situation when, as a result of one of the listed alternative execution actions, a consequence occurs, and pollution occurs.The perpetrator of this criminal act can be any person who acts against the regulations (Jovašević, 2010, p. 272).

From this legally established description of the offense, the conclusion emerges that, unlike the Serbian legislator, the existence of the basic form of this criminal offense does not require the occurrence of a consequence. In order for the basic form of a criminal offense to exist, it is only necessary to undertake an action which, by itself, is sufficient to cause a consequence, without requiring that the consequence actually occur. This clearly follows from the linguistic interpretation of the words "*which can*"and "*or can to a greater extent*"contained in the legal description of the act. So, one could say, the basic form of this criminal offense in Croatian legislation is, in fact, an offense with an abstract danger. Based on the importance of a healthy environment, as well as international obligations, and EU standards in terms of environmental protection, as well as the social danger of the act itself, the Croatian legislator cannot be criticized for defining the basic form of the criminal offense as an act with abstract danger, without requiring the occurrence of consequences. Such legislation is, in the light of the above, not only justified but also necessary.

On the other hand, if the act is consequently completed, i.e. if there are actual consequences of the act of committing the act, i.e. actual pollution of any of the listed eco-media, then there is a more severe form of this basic criminal offense against the environment, and what in Serbian legislation represents its basic form.

It follows from the above that the approach of the Croatian legislator and the criminal law response was stricter and more appropriate, at least on the legislative level, if one takes into account the importance of a healthy environment in everyday life.

When we talk about the qualifying elements from the legal description of the act, we can notice a partial distinction – the Croatian legislator opted for a combination of three standards: "significant measure", "longer" and "wider area". From a principle point of view, all criticisms expressed regarding the legal solution of the Serbian legislator also refer to the solution contained in the Croatian Criminal Code.

In terms of penal policy, by comparing the threatened penalties, it can be concluded that the Croatian legislator was stricter in this regard as well.

Namely, the basic form of this offense is punishable by a prison sentence of six months to five years, while the more severe form (where the consequence actually occurred) is prescribed by a prison sentence of one to eight years. For the negligent form of this act, a prison sentence of up to three years is prescribed. In contrast, the Serbian legislator prescribes a prison sentence of six months to five years for the basic form of this criminal offense (that is, where the consequence occurred), while for the negligent form of the offense, it prescribes a prison sentence of up to two years.

4.2. Endangering the environment with noise, vibrations or non-ionizing radiation[8]

Endangering the environment with noise is a criminal offense, the features of which are determined in Article 199 of the Criminačl Code of the Republic of Croatia. The offense consists in the illegal making of noise which is suitable to cause severe damage to the health of several people (Pavišić et. al, 2007, p. 592). The act of execution is making noise in the sense of sound of high intensity that exceeds the maximum permissible height prescribed by law. Noise can be produced in different ways, by different means. The consequence of this act appears in the form of the creation of a specific health hazard (according to the sense of hearing) of a large number of people. A fine or a prison sentence of up to three years is prescribed for the willful execution of this act (Jovašević, 2010, p. 272).

4.3. Serious crimes against the environment

The most serious criminal offense against the environment is the serious offense against the environment provided for in Article 214 of the Criminal Code of the Republic of Croatia. It is, in fact, a more difficult qualification for which the Code prescribes stricter punishment when certain environmental crimes have a more severe scope and intensity of consequences (Pavišić, 1991, p. 171 et seq.). Some of the crimes can turn into this most serious environmental crime, including environmental pollution (Environmental

[8] Although it is not the subject of this paper in the narrower sense, it is worth pointing out and praising the Croatian legislator for prescribing this incrimination as well. In Serbian legislation, Stojanović (2017) points out for a long time, this incrimination, i.e. this form of criminal environmental protection, is missing: *"This important form of endangering the environment is not incriminated by any other incrimination from secondary criminal legislation, so it remained on the level of misdemeanor protection"* (p. 829).

pollution) (Matijević, 1988, p. 40 et seq.). In the event that as a result of the intentionally undertaken act of committing one of the aforementioned environmental crimes, a consequence has occurred in the form of: the death of one or more persons or serious bodily injury or serious damage to health or changes in environmental pollution that cannot be removed for a long time, or environmental damage has been caused unlucky then there is this hard work (Jovašević, 2010, p. 273).

5. Conclusion

The environment is of immeasurable importance for modern man, modern society and the modern international community. Bearing this in mind, states undertake diverse legal and institutional measures to protect one of the basic human rights, which is proclaimed and protected not only in international documents, but which, within the framework of national legal systems, is also elevated to the level of constitutionally guaranteed human rights, as we saw in the examples of Serbia and Croatia.

In domestic, as well as in comparative legislation, there is one basic, general criminal offense (in addition to other special and individual ones) that has the environment itself as its object of protection – in Serbia, it is the criminal offense of environmental pollution.

Criminal incrimination in Serbia only sanctions "actually" completed criminal acts – when the consequence of the legal description of the act has occurred. On the other hand, the Croatian legislator decided to treat the (basic) offense itself as it treats traffic safety offenses – as an offense with an abstract danger, without requiring that the consequences of environmental damage occur.

Considering the criminal and penal policy, it is certainly clear that the Croatian legislator was stricter and more determined in providing criminal protection of the environment – at least when it comes to the legislative aspect. By prescribing a relatively mild punishment for an act that requires the occurrence of a consequence, the Serbian legislator was somewhat inconsistent with the intention of the constitution maker who elevated the right to a healthy environment to constitutional rank.

In any case, both observed legislations have some common problems, which primarily relate to widely prescribed incriminations: 1) they refer to an unlimited number of regulations in the field of environmental protection and 2) they are used with more completely legally undefined legal standards and a lot of substantial acts of criminal norms are left to the discretion of court practice.

However, the biggest problem is the fact that these legal solutions, which, in truth, have their shortcomings, have found sufficient application in practice. *De lege ferenda* , in addition to correcting the deficiencies indicated in this paper, every legislator, and the Serbian one in particular, would have to take comprehensive and concrete measures to ensure effective prosecution for environmental crimes. Otherwise, elevating the right to a healthy environment to a constitutional rank and prescribing criminal acts will remain nothing more than a political statement, a mere proclamation.

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KRIVIČNO DELO ZAGAĐENJA ŽIVOTNE SREDINE U KRIVIČNOM ZAKONODAVSTVU REPUBLIKE SRBIJE I REPUBLIKE HRVATSKE

REZIME: Svakako da je jedan od vodećih pokreta na globalnom nivou u prethodnih nekoliko decenija bio pokret za globalnu i intenzivnu zaštitu čovekove životne sredine, odnosno afirmirsanja, kao zasebnog, prava čoveka na zdravu život u sredinu. Imajući u vidu značaj zdrave životne sredine, te značaj njene zaštite, koja je iz društvene potrebe prerasla u pravni imperativ, svakako je opravdano životnu sredinu uspostaviti kao samostalan i primarni grupni zaštitni objekt u okviru domaćeg krivičnog zakonodavstva. Vodeći računa o tendencijama na međunarodnopravnom i uporednom planu u pogledu regulisanja krivičnopravne zaštite životne sredine, domaći zakonodavac posvećuje celo poglavlje Krivičnog zakonika upravo inkriminacijama koje za zaštitni objekat imaju životnu sredinu, u raznim pojavnim oblicima. Kao prvo delo predviđeno u okviru Glave dvadeset četvrte – Krivična dela protiv životne sredine – zakonodavac propisuje opšte i najznačajnije krivično delo iz grupe krivičnih dela protiv

životne sredine – Zagađenje životne sredine. Ovaj rad je posvećen analizi ovog krivičnog dela u domaćem krivičnom zakonodavstvu, sa osvrtom na pojedina rešenja sadržana u zakonodavstvu Republike Hrvatske i ukazivanju na njihove razlike

Ključne reči: *krivično delo zagađenja životne sredine, krivičnopravna zaštita, Krivični zakonik, krivična dela protiv životne sredine.*

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THE SIGNIFICANCE OF DIRECTIVE 2019/1151 IN THE DIGITALIZATION OF EUROPEAN UNION COMPANY LAW

ABSTRACT: With the rapid development of information and communication technologies in the EU, the establishment of the digital single market through the EU's strategy has allowed for fair market competition using the internet by both individuals (natural persons) and legal entities. However, regulatory disparities among EU member states have posed challenges for businesses engaged in cross-border activities within the EU's single market. There are big differences among member states in terms of the availability of internet tools that enable entrepreneurs and companies to communicate with competent bodies regarding issues related to their business. Furthermore, e-government services differ among member states. Some member states offer comprehensive user-friendly services entirely online, while others struggle to provide digital solutions at crucial stages of a company's life cycle. In certain EU member states, the establishment of a company or the submission of document and information amendments to the register are only allowed in person, or in person or electronically, while in some member states this can only be done electronically. Digitalization was supposed to simplify the procedures for establishing business entities and enable free business establishment at the EU level. The aim of this paper is to analyze the legislative framework at the EU level, which should facilitate business operations in the digital

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world and provide security to participants in the European single market, with a special focus on EU Directive 2019/1151.

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1. The role of the directive in EU company law

Directives are designated as the most important instrument in the formation of European company law, because they bind only the member states in terms of the goal to be achieved through harmonization, but each member state has the freedom to choose the form and method of achieving the prescribed goal (Barbic, 1999). The member states of the European Union belong to different legal traditions (Common Law, Civil Law), and that there are significant political, administrative and social differences between them. Directives allow member states to agree on general principles, without determining the precise content of a specific provision. They can be addressed to only one or only some member states. In this way, European company law acquires an indirect character, which means that it does not apply directly to companies (Barbic, 1999).

The directives that regulate the subject of the law of business companies primarily regulate the legal position of joint stock companies in EU member states. The main reason lies in the great economic power and influence that these companies have on the internal market. The directives are also applied to another legal form of business companies, the limited liability company. When adopting directives, each member state has the same right and opportunity to influence the determination of the content. Accordingly, they very often offer alternative solutions to a particular legal problem that originate from different national legal systems. Germany, France and Great Britain had a particularly strong influence on legislative activity. The influence of German company law is particularly noteworthy, both due to the fact that it is the most comprehensive, codified and modern national law of companies, but also because German lawyers were mostly present in the competent administration of the Commission (General Directorate III). English law and its approach particularly came to the fore when the viewpoint that law prevailedcompanies in close connection with the development of stock exchange, financial and tax law, while the General Directorate XV was dominated by English lawyers (Barbic, 1999).

The European company law is partially codified by Directive (EU) 2017/1132 with regard to certain aspects, (Directive (EU) 2017/1132) and

in the member states various laws on companies are still in force, which are amended from time to time in order to have been aligned with EU directives and regulations. In the regulation of the European law of commercial companies, the institutions of the Union have rarely resorted to regulations, because they are directly applied in all member states. They are applied when introducing some new legal institutes, e.g. European Economic Interest Grouping (EEIG) and European Society (Societas Europae – SE). In this way, the recognition of these new forms of business companies is ensured in all member states, and their intervention in the regulation of the characteristics, rights and advantages of these companies is prevented.

Accordingly, the Council Regulation on the European Economic Interest Grouping – EEIG from 1985 (Council Regulation (EEC) No 2137/85); Council Regulation on the Statute for a European company (SE) from 2001; (Council Regulation (EC) No 2157/2001), Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings. It introduces common rules on which court is competent to initiate proceedings in case of insolvency, on the applicable law and on the recognition of court decisions in order to prevent the transfer of property or court proceedings from one member state to another.

Recommendations do not have a greater meaning in the area of harmonization of European corporate law, primarily due to their non-binding nature. They play a greater role in the harmonization of securities law and stock exchange law. The Commission's existing recommendations that apply to companies relate mainly to accounting law and audit of balance sheets.

2. Digitalization in the European Union

Since 1995, information and communication technologies have had a positive impact on productivity growth in the European Union. In 2015, the European Commission launched the Digital Single Market, in order to be able to implement the main legislative proposals: the development of e-commerce, copyright, e-privacy, harmonization of digital rights and cybersecurity. The founding treaties do not contain special provisions on information and communication technologies; therefore, the European Union can take the necessary measures within the policies key to "digital" Europe, such as: industrial policy (Art. 173. TFEU) competition policy (Art. 101. – 109.) trade policy (Art. 206 and 207) of the trans-European network (Art. 170 – 172);

research and technological development (Art. 179 – 190) harmonization of legislation to improve the functioning of the internal market (Art. 114) free movement of goods, services, people and capital (Art. 28-66).

After the Lisbon Treaty in March 2010, the Strategy for Smart, Sustainable and Inclusive Development – Europe 2020 Strategy was adopted, in which the vision for the year 2020 was defined. The vision includes achieving high levels of employment, a low carbon economy, productivity and social cohesion. ICT has been identified as key to achieving the 2020 goals.

The European Commission defined several key initiatives: "Innovation Union", "Youth on the move", "Europe that uses resources efficiently, "Industrial policy for the era of globalization" with the aim of improving the quality of educational systems and easier entry of young people into the labor market". "Agenda for new skills and new jobs", "European platform for the fight against poverty, as well as the most important initiative in the field of digitalization "Digital agenda for Europe – DAE", with the aim of faster expansion of broadband internet so that households and businesses take advantage of the Digital Single Market. The Digital Single Market is the first pillar of the Digital Agenda for Europe, which contains 21 measures aimed at encouraging traffic in internet content, as well as establishing a single framework for electronic payments and consumer protection in the digital environment. The basic task of the Digital Agenda is to maximize the growth potential of the digital economy through the development of digital skills, the digitization of industry and services, the development of artificial intelligence and the modernization of public services. A European Union fit for the digital age is a key priority of the EU.

In the first half of 2020, the European Commission presented a digital strategy that would make Europe a global actor in the digital domain and the Digital Europe program for the period 2021-2027, aimed at building the EU's strategic digital capacities and facilitating the wide application of digital technologies. The "Digital Europe" program should provide funding for projects in five key areas: super-computing, artificial intelligence, cyber-security, advanced digital skills and ensuring the wide use of digital technologies throughout the economy and society. The program should overcome the gap that exists between the research of digital technologies and their application, and the results of the research should be put on the market for the benefit of European citizens and businesses, especially small and medium-sized ones. Furthermore, this program should help European companies, especially SMEs, in the introduction of advanced technologies, and in their expansion and exploitation of the possibilities of digital transformation.

Digital transformation should contribute to overcoming the current health crisis, and become a key driver of economic recovery, green growth and strategic autonomy of the EU.

3. Development of digitalization in the regulatory framework of EU company law

Ten years after "winter" report (2002) and Action Plan (2003), the EU Action Plan for e-Government 2016-2020 was adopted: where the importance of the improved use of digital tools in meeting the requirements related to businesses was particularly recognized. The connection of central registers, commercial registers and registers of companies of member states started in 2017, it greatly facilitated cross-border access to information about a company in the Union and enables registries in member states to communicate electronically with each other in connection with certain cross-border activities related to on economic companies (Accelerating the digital transformation of governments in the EU – 2016-2020 action plan)

Regulation (EU) 2018/1724 provides general rules, important for the functioning of the internal market, which relate to the electronic provision of information, e-procedures and assistance services. It foresees the online establishment of capital companies, registration of subsidiaries in the register, submission of documents and information by companies and subsidiaries. According to this directive, the member states are obliged to provide specific information about the planned online procedures as well as an adequate electronic form, all through a single entry point – European single entry point Single Digital Gateway. Also, in order to reduce the costs or the administrative burden on companies, member states should apply the "once only" principle in the area of company law. This principle provides that companies are not required to submit the same information to public bodies more than once. (e.g. in the case when a company is established in one member state and wants to enter a subsidiary in the register in another member state, the company should be allowed to use documents or information that have already been submitted to the register. Furthermore, in the case where the company is company established in one member state, but has a subsidiary in another member state, the company should be able to submit certain changes to information only in the register in which it is registered, without the need to submit the same information in the register in which the subsidiary is registered. (Regulation (EU) 2018/1724 of the european parliament and of the councilof 2 october 2018).

Furthermore, it is necessary to point out that this regulation is a key element of The Single Market Strategy, established by the Commission's Communication of October 28, 2015 entitled "Improving the Single Market: more opportunities for people and companies"(Communication from the commission to the European parliament, the council, the european economic and social committee and the committee of the regions Upgrading the Single Market: more opportunities for people and business).

This strategy strives to realize the full potential of the internal market by making it easier for citizens and companies to move within the Union and trade, business settlement and business expansion across borders. In fact, the Single Digital Gateway (SDGP) was established with the aim of facilitating, that is, online access to information, administrative procedures and assistance services that citizens and companies need to activate in another European Union country. By the end of 2023 at the latest, citizens and companies will be able to perform numerous procedures in all member states of the European Union without any physical papers. At the level of the European Union, the Your Europe page is active in order to facilitate cross-border activities for both companies and citizens. The planned system provides all business entities with the exchange of all necessary information, with a high degree of security and low costs. In the context of digitization and modernization of company law, the SDGP is important from two aspects, because it contains principles that are compatible, and we can freely say that they were a guide for those contained in Directive 2019/1151, and contain a series of rules that, even if they are not directly applicable to companies, to a large extent still relate to and are part of the entire business environment.

4. EU directive on the use of digital tools and processes in company law

EU Directive 2019/1151 is often referred to as the CorpTechDirective. This directive was adopted by the European Parliament on June 20, 2019, and entered into force on July 31, 2019, and represents the first of two directives within the so-called company law package. The member states had the obligation to transpose it into the national legal system by August 1, 2021, exceptionally by August 1, 2022 (Directive (EU) 2019/1151).

It provides that the establishment of business companies can be carried out entirely via the Internet without the need for the applicant to appear in person before any competent body or including the drafting of the deed on the establishment of a business company (Article 13.b). Only in cases that

would be justified by reasons for the protection of the public interest, member states may require the physical presence of the applicant. The member states establish detailed rules for the establishment of business companies via the Internet, including rules on the use of forms (Article 13 of the Directive), that is, documents and information necessary for the establishment of a business company (Article 13.g paragraph 2). These rules provide: (Directive (EU) 2019/1151):

- Procedures guaranteeing that applicants have the legal capacity and authority to represent the company;
- Requirements in accordance with which applicants must use trust services from Regulation (EU) no. 910/2014;
- Procedures for checking the legality of the company's activities and the appointment of directors.

In order to achieve a high level of trust in cross-border business, only means of electronic identification that comply with Article 6 of Regulation (EU) no. 910/2014 (Gongeta, 2020). Furthermore, it should be pointed out that in many articles of Directive 2019/1151 the term "electronic" is present, which refers to electronic equipment for processing, digital compression and data storage, through which information is sent and received in a manner determined by the states members (Bartoceli, 2018). This term reflects the direction of both the current and future action of the European Union in the area of company law, which is actually an essential part of the new regulation related to digitalization.

In order to facilitate electronic procedures for companies, member state registries should ensure transparent rules on fees and apply them without discrimination. Transparency in business, according to this directive, also means simpler access to other information about the company (status of the company, its branches, as well as persons authorized to represent).

EU Directive 2019/1151 adapted the law of European Union companies to digitalage, based on the following rules that enable:

1. Fully, online register a limited liability company, establish new branches and submit documents for companies and their branches to the business register;
2. National proposals for forms and information on national requirements are made available via the Internet in a language understood by the largest number of cross-border users;
3. Rules on fees for online formalities are transparent and applied in a non-discriminatory manner;

4. The fees provided for the registration of companies via the Internet must not exceed the total costs incurred by a specific member state;
5. The "only once" principle, according to which the company should submit the same information to public bodies only once;
6. Documents submitted by companies are stored in national registers and exchanged among them in a readable and searchable format;
7. More information about companies is made available free of charge to all interested parties through business registers (Gongeta, 2020).

Member States are allowed to be able to limit online incorporation only to certain types of capital companies, as specified in the Directive, due to the complexity of establishing other types of companies in national law. The establishment of a business company via the Internet should be possible by submitting documents or information in electronic form, without prejudice to the substantive and procedural requirements of the member states, including those related to legal procedures for the drafting of articles of incorporation, and to authenticity, accuracy, reliability, credibility and appropriate legal form of submitted documents or information. In order to ensure the efficient establishment of a business company via the Internet or the entry of branches in the register via the Internet, Member States should not make such establishment or entry in the register conditional on obtaining any permit or approval prior to the completion of the establishment or entry in the register, unless this is provided for by national by law in order to ensure proper supervision of certain activities. After establishment or registration in the register, national law should specifically regulate cases in which companies or branches may not perform certain activities without obtaining a permit or approval (Mahmutćehajić & Silajdžić, 2021).

The registration period should not be longer than five days, exceptionally up to ten days, counting from the day when the request was submitted. According to the directive, it is the discretionary right of the member states whether notaries are included in the establishment process or not. The directive therefore offers the legislator the necessary flexibility to include notaries in the online system of company incorporation, branch registrations and submission of documents and information. According to the Directive, the physical presence of the founder before any public body may be required only in certain cases if it is justified by reasons of public interest. This is the case, for example, when there are reasons to suspect identity falsification or non-compliance with the rules on business capacity and the authority of the founders to represent the company. These reasons of public interest must be

assessed on a case-by-case basis. Therefore, the obligation to visit a notary or any other authority may not be required under this Directive.

The planned connection of all European business registers through the Business Registers Interconnection System (BRIS) should also be seen as a further positive innovation in terms of uniform digitization across Europe. In the future, all companies operating on the territory of the EU will be assigned a European identification number, or EU-ID, together with a national commercial register number. This level of transparency increases the legal security of creditors, business partners, and consumers in doing business with companies that belong to another EU member state (or countries that are part of the system and that are part of the European Free Trade Association – EFTA). However, the high level of transparency raises fears of misuse of widely available information and violations of special data protection regulations. The basic principle that should be applied when it comes to the interconnection of business registers from the territories of different countries is that all information that is available in the home country should also be available to interested persons in foreign countries (Vusijić, 2019).

It is important to emphasize that EU member states in the context of positive legislation agree on the most important issues of corporate law, which are considered to be covered by the lex societatis. It refers to issues of establishment of a company, name, legal and business capacity, capital structure, rights and obligations of company members, and issues of corporate governance. Provisions on electronic procedures should include control of the identity and legal capacity of persons who wish to establish a business company or enter a branch in the register or submit documents or information with the aim of combating fraud and hijacking of a business company, as well as providing protective mechanisms for the reliability and credibility of the documents and information they contain national registries. These controls could be part of the legality check required by some Member States. The means and methods for implementing such controls should be developed and adopted by member states. For this purpose, Member States should require the involvement of notaries public/notaries or lawyers in any part of online procedures. However, their inclusion in the procedure should not make it impossible to conduct the entire procedure online. When establishing companies and registering branches in the register via the Internet, in order to reduce costs and burdens for companies, it should be possible to submit documents and information to the national registers entirely via the Internet during the entire life cycle of the company (Mahmutćehajić & Silajdžić, 2021).

5. Conclusions

Digitization in the law of companies implies the daily use of modern technologies, i.e. electronic documents, primarily in the process of establishment and registration of business entities, the business life of business entities, as well as in the process of registering business changes that are subject to mandatory registration. Digitization refers to communication within the company itself and the work of its bodies (meetings of the company's bodies through means of audio and visual communication).

The application of ICT in the operations of a business company should reduce the use of classic written documents to the minimum possible extent, and business entities should be enabled to communicate with each other and with the competent state authorities electronically.It was stated above that digitization and digital transformation are the main directions of the future development of the EU.

In the end, it can be concluded that the law of commercial companies is continuously changing either as a response to the current COVID-19 pandemic or due to the general need for more flexible and digital everyday solutions. With Directive 2019/1151, which entered into force on July 31, 2019, the EU is taking further steps towards the digitization and modernization of corporate law in its member states. The most important innovation relates to the obligation of member states to enable online establishment of at least certain types of companies, online archiving and access to information about the company, online registration of branches, without the founder or interested person having to leave the computer screen.

Passing this regulation represents a challenge for every member state that needs to provide citizens and consumers with legal certainty, while at the same time creating conditions that allow companies to be more efficient and compete and be more innovative in a very competitive global environment. At the level of the European Union, the establishment of business companies, the entry of branches in the register, and the submission of documents and information will be completely electronic no later than August 1, 2022. With the aim of strengthening trust, states should provide the possibility of secure electronic identification and use of trust services for both national and cross-border users. The very fact that electronic establishment is of great importance in the modern economy that strives for efficiency and economy, in which natural and legal persons are increasingly establishing companies on the territories of foreign countries,they must not be at the expense of legal security, so it is necessary to pay great attention to ensuring the means of determining the identity of the founder.

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ZNAČAJ DIREKTIVE 2019/1151 U PROCESU DIGITALIZACIJE KOMPANIJSKOG PRAVA EVROPSKE UNIJE

REZIME: Sa ubrzanim razvojem infomaciono-komunikacionih tehnologija u EU Strategijom je uspostavljeno jedinstveno digitalno tržište, koje je fizičkim i pravnim licima omogućilo pošteno tržišno nadmetanje upotrebom interneta. Međutim, neujednačenost regulative u državama članicama EU predstavljala je problem privrednim subjektima u prekograničnom poslovanju u okvirima jedinstvenog tržišta EU. Velike su razlike među državama članicama u pogledu dostupnosti internet alata koji preduzetnicima i privrednim društvima omogućuju komuniciranje sa nadležnim telima u vezi sa pitanjima koja se odnose na njihovo poslovanje. Dalje, usluge e-uprave razlikuju se među državama članicama. U nekim državama članicama dostupne su sveobuhvatne usluge, prilagođene korisnicima koje se u potpunosti pružaju online, dok druge ne mogu pružiti digitalna rešenja u određenim glavnim fazama životnog ciklusa privrednog društva. U određenim državama članicama EU, osnivanje privrednog društva ili podnošenje izmena dokumenata i informacija u registar dopušteno je samo lično, ili lično ili elektronski, dok se u nekim državama članicama to može učiniti samo elektronski. Upravo je digitalizacija trebala da pojednostavi procedure osnivanje privrednih društava i omogući slobodnu poslovnog nastanjivanja na nivou EU. Cilj ovog rada je analiza zakonodavnog okvira na nivou EU koji treba da olakša poslovanje u digitalnom svetu i pruža sigurnost učesnicima na evropskom jedinstvenom tržištu, sa posebnim fokusom na Direktivu EU 2019/1151.

Ključne reči: *digitalizacija, pravo privrednih društva, Direktiva 2019/1151.*

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ILLEGAL TRADE IN CRIMINAL LAW

ABSTRACT: Trade, as a form of commodity-money relations, has a long history. It begins with the first forms of exchange of goods for money and other valuables. Given that the purpose of trade is the acquisition of profit based on the sale and purchase of goods and services, this activity undoubtedly enabled the commercial class of society to accumulate significant wealth. This is why merchants are considered to be among the wealthiest people in the society, from the beginning of the first states, up to the present day. However, trading often represents an 'ideal' way of acquiring illegal gains, which can rapidly increase if it is carried out over a long period of time. The suppression of various forms of illegal trade is carried out at the legal and institutional level.

Hence, regulations in this field can be classified into basic ones (governing trading activities), criminal ones (specifying particular criminal offenses), and misdemeanor ones (prescribing penalties for legal entities and individuals). The legal peculiarity in regulating trade, including its legal forms, lies in the extensive catalog of different procedures. In the field of criminal law, there is an independent criminal offense of the same name with multiple forms. In our country, judicial practice is full of various cases in which the criminal ingenuity of the actors of illegal trade is especially manifested. The inspection authorities are the society's first line of defense against various forms of illicit trade. In the process of carrying out regular and extraordinary supervision, they observe and initiate investigation into the responsibility for offenses in the domain of illegal trade. In the field of

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criminal law, there is an independent criminal offense of the same name, which has several forms. Consequently, this paper gives an overview of the legal mechanisms for suppressing illegal trade in our country.

Keywords: *illegal trade, trade in goods, criminal offense, misdemeanor, court.*

1. Introduction

Trade, as one form of the various relationships based on the exchange of commodity and money between people, is a faithful companion of the development of human society. In its initial stages, the simplest forms of trade existed, which were reduced to commodity exchange expressed through a certain value equivalent. This way, people made up for the lack of certain goods that were in the possession of other people. At the same time, the exchange took place according to the parity principle, which avoided the possibility of an unequal income ratio between traders. The appearance of money provided a new input in the development of trade, both within one country and among merchants who traded goods on the territory of two or more countries. At first, money was expressed in gold, so its value was determined based on purity and weight, which, as a rule, was the measure used to determine the quantity and value of certain goods that were the subject of trade. Aware of this, merchants tried to express their profit as much as possible in gold or other goods (e.g. precious stones). They measured their wealth according to the possession of these goods and the ability to trade them by buying and selling large quantities of product and other goods.

Trading and the gradual formation of a trading class in society soon began to exhibit negative phenomena and different forms of their manifestation. These refer to various types of abuse, smuggling, fraud regarding the value and quantity of goods, robberies of trade caravans, etc. The language of modern economy and law denotes illegal trade as all aforementioned forms of trade as well as numerous other forms of trade related business. It represents a special phenomenon that is classified as an incriminating activity. Consequently, illegal trade is actively suppressed by criminal law in every country. This includes the determination of the misdemeanor and criminal liability of individuals and legal entities that participate in illegal trade.

The specificity of criminalizing illegal trade in criminal law is reflected in the fact that it is a flexible form of criminal activity. Every day, practice shows the criminal ingenuity of traders who, in a covert and/or insidious way, try to

make illegal trade legal. That is why the regulations dealing with this field must be permanently adjusted and adapted to this new reality. An additional circumstance is the fact that radical changes in the socioeconomic relationships in our country, embodied in property transformation and adaptation of the economy to market conditions, contribute to the fact that regulations must be coordinated with European legal instruments. Thus begins the process of harmonizing our internal legislation with European standards that are present in the regulations of the European Union. In addition to the basic regulations in the field of trade, the harmonization of regulations also covers the field of criminal law. Some of the traditional punishments are abolished while, at the same time, significantly more mild punishments are introduced characterized by a much more accommodating attitude towards the perpetrator.

A new momentum in expanding criminal law was made by the introduction of criminal liability of legal entities into our legislation. This was done by adopting a completely new legal act, which clearly sets the normative framework, the content and the scope of criminal liability of legal entities. Knowing that legal entities are an indispensable participant in the trade of goods and the provision of services, our legislator tried to clearly incriminate their responsibility. Its introduction did not neglect the misdemeanor and economic criminal liability of legal entities in our country. So to speak, our legislation now follows the lines of modern normative solutions in which illegal trade is considered a negative product.

The peculiarity of the matter dealing with trade, as a form of entry of legal entities and natural persons into mutual business relations, is reflected in the specific manifestations of its illegal forms in practice. Their (un) recognizability is the main obstacle to preventing various types of speculative business in trade. Therefore, since there is no proactive form of suppression of illegal trade, the government is forced to apply repressive mechanisms in the two segments of criminal law protection, namely:

a) The first, at the same time somewhat more mild, is a misdemeanor type of punishment for illegal trade of legal entities and natural persons. It is within the penal provisions of the current law that regulates trade in our country.
b) The second, significantly more repressive, is the criminalizing method of suppressing illegal trade. It is an independent criminal act, within the group of criminal acts against the economy, the focus of which contains several forms of manifestation.

2. Trade as an independent activity

Trade, as a form of independent economic activity, is aimed at the acquisition of material profit for its participants. For this reason, a whole catalog of business activities related to the purchase and sale of goods, as well as the provision of services with the aim of achieving financial benefits, is being established and further developed among traders. Trade is done as (Article 11-12 of the Law on Trade, 2019):

1. Wholesale trade (wholesale) is the purchase of goods for resale and/or provision of services to legal or natural persons registered in the appropriate register.
2. Retail trade (retail) is the sale of goods and/or the provision of services to consumers in order to satisfy personal or household needs.

Legal frameworks established in this way provide wider opportunities for trading activity. In the area of wholesale in our country, statistical data show significant variations – both increase and decrease in sales of certain products. For example, the value of sales and purchases of agricultural, forestry and fishing products in the Republic of Serbia in the first quarter of 2023, compared to the same period in 2022, is 6.8% lower in current prices, while the constant prices are lower by 26.0% (Statistical Office of the Republic of Serbia, 2023).

Retail trade, i.e. retail sale of goods and/or provision of services to consumers, shows oscillating trends in practice. Based on statistical indicators, expressed in absolute and relative values, the turnover of goods in retail trade in the Republic of Serbia in May 2023 compared with the same month of the previous year was higher in current prices by 5.7%, and lower in constant prices by 6.2% (RSZ, 2023). Periods of stagnation in the retail sector are partially reflected in the shortcomings of the existing system and economic policy, which companies cannot directly influence. Therefore, in order to exit the crisis and improve the business of retailers, an efficient and adequate reaction of the government is needed. That is why it is necessary to implement appropriate institutional, economic, and political adjustments that would affect the future behavior of consumers and investors (Roca, Milićević & Vukmirović, 2014, p. 57).

Trade, as an independent activity, includes a wide range of jobs the manifested forms of which are constantly expanding. According to the territorial principle, trade can be divided into international (regional) and internal. The process of globalization initiated the internationalization of the legal order. International trade law is being established in the sphere of trade,

which entails the process of adopting unique and harmonized legal regulations that would be applied throughout the world (Vukadinović, 2012, p. 341).

International trade includes many types of sale of goods and services. It depends on the quantity and the type of goods and/or services that are the object of international exchange, as well as the place where the trade is carried out. Consequently, international trade is manifested in the following: sale of goods upon seeing the goods in their entirety; sale of goods after direct trade negotiations; sale of goods through representatives; sales at international fairs; sales at international auctions; sales on stock exchanges; sales through Off-shore companies; sale by auction; sale by sample. The accelerated development of ecology has enabled a special form of trade in transferable permits (*cap and trade*). It comes down to the transferability of pollution rights through transferable permits. Therefore, any form of violation of these rules is considered a form of illegal trade in international business law (Munitlak Ivanović, Raspopović & Mitić, 2014, pp.116-117).

Even though international trade law contains a system of legal regulations which regulate cross-border trade, they are not the only source to determine the presence of (il)legal trade. As far as this part is concerned, a significant place belongs to the autonomous international codification of law, the main protagonists of which are drafting agencies and various expert groups. This type of codification of international business law rests on the autonomy of the will of the interested subjects in order to achieve greater uniformity of relevant rules, without formal unification of state law (Mijatović, 2018, p. 172).

The mutual connection of international, regional, and domestic business law is also reflected in the field of electronic commerce. "Besides the global plan, the harmonization of the rules of electronic commerce takes place at other levels, with different importance and coverage. On the regional level, relevant EU rules are of primary importance, where the most important role in regulating electronic transactions on the internal market between member states is played by the Directive on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) from 2000. It primarily aims to contribute to the proper functioning of this market by ensuring free movement of information society services between member states, in order to ensure legal security and consumer trust" (Divljak, 2018, p. 914).

Although essentially non-economic, the Church and other religious communities participate in trade. In this manner, they conduct economic activity that ranks them among commercial entities. However, their business

and legal position is somewhat specific as they have numerous tax benefits. In European communitarian law, we can see the determination of the European Union to establish in principle the economic position of the Church and other religious communities. However, member states must specify in more detail the ways of participation of religious entities in trade in their internal regulations. The legal specifics of these legal solutions must follow the lines of European solutions and the needs of our society to enable the (legal) unimpeded functioning of the Church and other religious communities.[1]

3. Illegal trade in criminal law

Criminal law is a term that denotes penal law in a number of countries. There, the basic legal regulations in the legal area of criminal law are called 'penal'. In our country, we have specific legal situation, where the term 'criminal law' is used in valid constitutional norms. In the very title of Article 34 (Constitution, 2006), the term 'legal certainty in criminal law' is used. As a result, the distinction between permitted and prohibited trade is sanctioned within misdemeanor law and criminal law. Using our constitutional legal terminology, in this paper we will use the term 'criminal law' for the field incriminating illegal forms of trade in the aforementioned branches of law.

A) Illegal trade in misdemeanor law

Misdemeanors represent special form of illegal acts for which a misdemeanor sanction is prescribed by law or other regulation of a competent authority (Article 2 of the Law on Misdemeanors, 2013). Misdemeanors are prescribed by law or ordinance, or by local self-government decisions when there is a justified need for it (Article 4, paragraph 2 of the Law on Misdemeanors, 2013). Given that trade is an activity aimed at obtaining economic profit, it is understandable that its illegal forms must be subject to misdemeanors law. Hence, our legislator has specifically prescribed the possibility of misdemeanor liability of legal entities and natural persons for engaging in commercial activity in an illegal manner. In this way, the

[1] "In Austria, the business of churches and religious communities is regulated by general economic regulations, and tax exemption or reduction depends on whether the Church has the status of a legally recognized entity under public law (which is not the legal status of all churches and religious communities, but some of them have the status of an association), whether the business was carried out for the purpose of the church, as well as whether it meets the same conditions as corporations that act for the purpose of public benefit or charity" (Đurić & Trnavac, 2018, p. 93).

legislator provided the possibility of conducting misdemeanor proceedings and imposing misdemeanor penalties.[2] This was done within the framework of penal provisions of the current Law on Trade, where in the Article 67 it was prescribed that a fine of RSD 100.000 will be imposed on a legal entity for a misdemeanor:

1. If trade records are not kept in a complete and prescribed manner (Article 30);
2. If data regarding the trader, the service provider or data on the sales facility are not visibly posted (Article 32);
3. If the working hours are not visible posted or marked working hours are not adhered to (Article 33);
4. If goods are sold with improper or incomplete declaration (Article 34);
5. If the price is not visibly posted in accordance with Article 35 of this Law;
6. If the entity fails to submit data in accordance with Article 44 of this Law.

Apart from this, for actions referred to in paragraph 1 of this article, a natural person or a person responsible in a legal entity shall be fined RSD 10 000. For the actions referred to in paragraph 1 of this article an entrepreneur shall be fined RSD 40 000.

Considerably stricter fines, in the ragne of RSD 500 000 to RSD 2 000 000 are prescribed for legal entities if they (Article 68 of the Law on Trade, 2019):

1) Conduct trade at a sales facility that is not determined by an act of the competent body of the local self-government unit in accordance with Article 14, paragraph 5 of this Law;
2) Carry out trade by personal offering contrary to the provisions of Article 16 of this Law;
3) Perform the activities of a fair, organizer of economic exhibitions and traditional events, market, wholesale market or auction house, contrary to Art. 20-24 of this Law;
4) Perform trade contrary to Article 26 of this Law;

[2] It is important to note that the meaning and essence of the existence of misdemeanor sanctions consists in the necessary limitation of the rights of legal entities and natural persons in order to achieve their purpose. At the same time, respect for the principle of legality in terms of their type and measure must not be questioned (Martinović, 2014, pp. 196-197).

5) The decision of the Government on prices is not respected in accordance with Article 28, paragraph 3 of this Law;
6) Do not possess appropriate documents accompanying the goods in the manner prescribed (Article 29);
7) Do not keep trade records (Article 30);
8) Issue or or express a trustmark contrary to Article 31 of this Law;
9) Sell goods without declaration (Article 34);
10) Offer goods or services to consumers with special sales incentives contrary to Art. 36 and 37 of this Law;
11) Advertise sales incentives contrary to Article 38 of this Law;
12) Do not comply with temporary market protection measures in accordance with Article 39 of this Law;
13) Carry out speculation (Article 42);
14) Organize, perform, advertise, or encourage pyramid trade (Article 43);
15) Act contrary to the measure prohibiting the trade of certain goods, i.e. the performance of a certain service, or disposing of the goods, i.e. continue the performance of the service, until the market inspector confirms during extraordinary inspection that the reasons for the prohibition of trade of certain goods or the performance of a certain service have been removed, or that the goods have been permanently removed from the market (Article 54);
16) Act contrary to the measure of temporary close of the sales facility (Article 55);
17) Act contrary to the measure of the temporary ban on conducing trade by personal offering (Article 56);
18) Act contrary to the measure of temporary ban on remote trade (Article 57).

For the aforementioned actions, a natural person or a person responsible in a legal entity is fined from RSD 50 000 to RSD 150 000 dinars, while an entrepreneur is fined from RSD 50 000 to RSD 500 000.

In addition to the above-mentioned entities, fines in the nominal rage of RSD 50 000 to RSD 500 000 are prescribed for natural persons if they trade in goods/services and are not traders or service providers (Article 69 of the Law on Trade, 2019).

In addition to a misdemeanor penalty, a protective measure prohibiting the performance of certain jobs or activities for a certain period of time can be imposed on a legal entity, a person responsible in a legal entity, and a

natural person. In addition, our legislator additional ensured efficiency in the application of misdemeanor sanctions. This was done in such a way that every person sanctioned for a misdemeanor is registered in the register of sanctions for a period prescribed by law. Certain laws, and even lower legal acts, prescribe the legal consequences of misdemeanor sanctions (Drakić & Milić, 2018, p. 124).

B) Illegal trade in criminal law

Effective protection of society from various forms of illegal trade is not possible without criminal law. At the same time, it is the ultimate means of protection (ultima ratio) that exists when it is not possible to protect the economy of a country by the norms of other branches of law. Our legislator has provided a special criminal offense of illegal trade in the provisions of Article 235 (Criminal Code, 2005). This is a criminal offense that consists of blanket provisions expressed through multiple forms (Ruling of the Supreme Court of Cassation no. 178/2022 of March 22, 2022).

The *basic form* of this criminal offense (paragraph 1) is committed by a person who, without an authorization for trading, procures goods or other objects of a substantial value for the purpose of sale, or who without authorization and to a substantial degree engages in trade or in mediation in trade, or engages in representation of organizations in domestic or foreign movement of goods and services. Therefore, several forms of this act of criminal offense are foreseen, which differ in content and character. They are connected by the permanent nature of the offending act, which is reflected in the long-term involvement in illegal trade in the manner described in more detail. However, our legislator does not determine the minimum time necessary for performing these activities, which leaves it to judicial practice to be evaluated in each criminal case. In addition, the concept of things, in terms of this criminal offense, should be understood much more broadly than in civil law (Stojanović, 2012, p. 707).

The *first serious form* of criminal offense (paragraph 2) is committed by a person who engaged in the sale of goods the production of which he has illegally organized. This practically means that the perpetrator of the criminal act has a double role, taking at the same time the role of manufacturer and the trader.

The *second serious form* of this criminal offense (paragraph 3) is committed by a person who unlawfully sells, buys or barters goods or objects the movement of which is prohibited or restricted. The perpetrator of this form

of illegal trade has several trading roles. In them, he appears as a seller, buyer or exchanger of goods that are subject to partial or complete restrictions of movement. However, this offense also exists when the turnover of these times was carried out only once, while several successively undertaken actions, as a rule, constitute a prolonged criminal offense (Lazarević, 2011, p. 774).

The *most serious form* of this criminal offense (paragraph 4) is committed by a person who, engaging in illegal trade in previously mentioned forms, organizes a network of dealers or middlemen, or has acquired material gain exceeding four hundred and fifty thousand dinars. Based on the legal description of the qualifying elements, it is clear that our legislator, guided by special reasoning, specifically criminalizes the two most serious forms of illegal trade, namely: a) organized trade through the use of a network of dealers of middlemen and b) acquiring property benefits exceeding the value of four hundred and fifty thousand dinars.

Analyzing the punishments prescribed, we can notice a certain leniency of our legislator. It is reflected in the prescription of a fine that does not affect the perpetrators of this crime to the right extent. Prison sentences, although they dominate all forms of illegal rade, are not severe. Since the concept of 'gray economy' was the basis for the development of the concept of illegal trade, and the legal term of illegal trade, the perpetrators of this crime, as a rule, have a somewhat longer criminal record (Matijašević & Zarubica, 2021, p. 32). Therefore, in our opinion, it is necessary to make the span of penalties more severe, especially in case of imprisonment, in the sense of raising the special minimum and special maximum.

Mandatory imposition of a security measure of seizure of objects is proscribed. It includes the seizure of the entire catalog of goods and objects that were involved in illegal trade (paragraph 5). In addition to mandatory seizure, the court can order the mandatory destruction of items (Joksić, 2019, p. 407).

4. Conclusion

Trade, as a form of independent activity, represents a specific legal area the frameworks of which are set by international legal instruments and national legislation. In this regard, we have a specific legal situation, expressed through the relationship between basic regulations in the field of trade, and criminal regulations, which incriminate the forms of its illegal activity. Therefore, penal norms have a blanket character and thus are purposefully aimed at the basic legal regulations in the field of trade. This contributes to a more effective suppression of illegal trade within and outside national borders.

The fight against illegal trade in criminal law happens by establishing the misdemeanor and criminal liability of natural persons and legal entities. Liability for a misdemeanor is provided within the penal provisions of the current Law on Trade. Fines are prescribed, the nominal ranges of which are adapted to the nature of the offender. In the field of criminal law, there is a special criminal offense of illegal trade (Article 235 of the Criminal Code, 2005). It contains several forms (basic, serious and the most serious), which additionally indicates the need of our legislator to set clear frameworks in which the court should move when determining the criminal responsibility of the perpetrator (natural person and/or legal person) of this criminal offense.

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NEDOZVOLJENA TRGOVINA U KAZNENOM PRAVU

REZIME: Trgovina, kao oblik robno-novčanih odnosa, ima svoju dugu istoriju. Ona započinje sa prvim oblicima razmene robe za novac i druge dragocenosti. S obzirom da je predmet trgovine sticanje dobiti, po osnovu prodaje i kupovine robe i usluga, nesumnjivo je ova delatnost omogućavala ostvarivanje velikih prihoda trgovačkom sloju društva. Otuda se trgovci u stanovništvu smatraju jednim od najimućnijih, od nastanka prvih država, pa sve do današnjeg dana. Međutim, trgovina neretko predstavlja „idealan" način sticanja protivpravne dobiti, koja se rapidno uvećava ako se obavlja u dužem vremenskom periodu. Suzbijanje različitih oblika nedozvoljene trgovine vrši se na pravno-institucionalnom nivou. Zato možemo propise u ovoj oblasti podeliti na osnovne (kojima se reguliše trgovačka delatnost), krivične (propisana je posebna inkriminacija) i prekršajne (propisane su kaznene odredbe protiv pravnih lica i fizičkih lica). Pravni specifikum u regulisanju trgovine, uključujući sve njene zakonske oblike, ogleda se u dugom katalogu različitih postupaka. Sudska praksa obiluje različitim

predmetima u kojima se posebno ispoljava kriminalna domišljatost aktera nedozvoljene trgovine u našoj zemlji. Na prvoj liniji odbrane društva od različitih oblika nedozvoljene trgovine nalaze se inspekcijski organi. Oni u postupku vršenja redovnog i vanrednog nadzora uočavaju i iniciraju utvrđivanje odgovornosti za prekršaje u domenu nedozvoljene trgovine. Na području krivičnog prava postoji samostalno krivično delo istog naziva koje ima više oblika. Sledstveno tome, ovaj rad daje prikaz pravnih mehanizama u suzbijanju nedozvoljene trgovine u našoj zemlji.

Ključne reči: *nedozvoljena trgovina, promet robe, krivično delo, prekršaj, sud.*

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LEGAL REGIME FOR THE PROTECTION OF EMPLOYEES' CLAIMS IN THE CASE OF EMPLOYER'S BANKRUPTCY IN THE REPUBLIC OF SERBIA

ABSTRACT: When bankruptcy proceedings are initiated by an employer, that often leads to uncertainty and problems for its employees. One of the biggest problems in this kind of situation is the protection of employees' claims arising from the employment relationship. Employees have the right to the payment of their claims arising from the employment relationship, such as unpaid wages, transportation allowances, meal allowances, holiday bonuses and the alike.

However, in the case of the employer's bankruptcy, these claims are at risk, and there is a possibility that employees may not be able to fully collect them, which compromises the fundamental principles of labor legislation. For this reason, the state intervenes to protect monetary claims arising from employment. The primary mechanism involves granting privileged creditor status with priority claims, along with mechanisms to protect these claims through a special guarantee institution. If there was no such intervention by the state, the realization of those rights would be difficult. However, even with state intervention, the realization of these rights is not guaranteed. In this regard, this paper will examine models for protecting employees' claims in the event of bankruptcy, while identifying practical problems in this field.

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Keywords: *bankruptcy, claims, employees, wages, employment relationship.*

1. Introduction

Bankruptcy can be defined as the institution of collective settlement of creditors' claims, on the bankrupt debtor's assets, with as few procedural costs as possible and with as little time as possible. Also, bankruptcy can be defined as the institute of judicial settlement of creditors on the debtor's assets, which may result in the termination of the company's existence as a legal entity or its reorganization. In any case, the bankruptcy procedure begins with the submission of a proposal by an authorized proposer, namely: a creditor, debtor or liquidation administrator. When a business entity enters bankruptcy proceedings, employees lose the financial resources they use to support themselves and their families, unless there are social security mechanisms that can help them appropriately meet their existential needs (with payments of an appropriate amount and duration) until they find a new job (Mucciarelli, 2017, p. 264). The opening of bankruptcy proceedings has significant substantive and procedural consequences, primarily in terms of the position of the bankrupt debtor, but also in terms of the rights of his creditors. The opening of bankruptcy proceedings affects the claims of the bankrupt debtor, as all his claims, both monetary and non-monetary, become due. Employees have the legal right to protect their claims in case of bankruptcy. In many countries, legislation prescribes certain measures to be applied in the event of bankruptcy, to ensure that employees effectively collect their claims. The most common measures to protect employees' claims in the event of bankruptcy include:

1) Priority of payment of outstanding claims – in many countries, individual claims of employees have priority in payment over other claims in case of bankruptcy;
2) Guarantees for payment – in some countries, a guarantee fund is established for the payment of individual claims of employees in case of bankruptcy. Such funds usually cover unpaid wages, severance pay, increased earnings for past work, social security contributions and other similar obligations to employees;
3) Limitation of dismissal – in some countries, the legislation limits the right of the employer to cancel the employment contract of the employee, in order to prevent the employee from being deprived of their rights in case of bankruptcy.

In many countries, these matters are regulated by bankruptcy laws or labour laws. However, the protection of employees' claims depends on the conditions and legal regulations in each country, which further results in the existence of significant differences in the prescribed standards in this area of law. Therefore, in this paper, primary attention will be devoted to the question of employees' claims against the company that is undergoing bankruptcy proceedings. Namely, the reason for writing this paper primarily concerns the research of the position of employees due to the opening of bankruptcy, that is, the question of the status of their claims from the employment relationship to which they are entitled, in the situation of bankruptcy of the employer. The paper explores of the reasons for protection in case of bankruptcy of the employer, and basic mechanisms of protection, namely the privilege system and the guarantee system through the actions of the Solidarity Fund. The initial hypothesis is based on the fact that the existing protection systems in the Republic of Serbia provide a certain degree of legal security for employees, but not enough to say that the position of employees is safe and that there is room for further improvement of the aforementioned protection mechanisms.

2. Employees' need for special protection in case of bankruptcy

Originally, bankruptcy was created as an instrument of collective protection of creditors in an environment unfavourable for the realization of their claims (Finch, 2009, p. 9; Višekruna, 2013, p. 15; Radović, 2018, pp. 31-32). The assets of the company are used to settle the claims of its creditors. To prevent the situation of uncontrolled robbery (ravening) of the debtor's remaining property, the law constitutes special rules of the procedure for their settlement (Kovačević, 2022, p. 325). These rules, which in our law are primarily defined in the Bankruptcy Law, implement an important principle of the bankruptcy procedure, namely the principle of protection of bankruptcy creditors, which proclaims that bankruptcy enables the collective and proportionate settlement of bankruptcy creditors (Bankruptcy Law, 2009). The principle of equal treatment and equality is also important, which defines that in the bankruptcy procedure, all creditors are provided with equal treatment and an equal position of creditors of the same payment order, that is, of the same class in the reorganization procedure (Bankruptcy Law, 2009). The goal of bankruptcy is, as mentioned, the settlement of creditors. Bankruptcy creditors, depending on their claims, are classified in payment queues or payment orders. Thus, the bankruptcy creditors of the lower payment order can be settled only after the bankruptcy creditors of the higher

payment order have been settled. In this sense, it is important to define the status of employees in case of bankruptcy of the employer, with the status of a legal entity, and of even greater importance is the status of the claims they assert against the employer. Certainly, the basic right from the employment relationship is the right to pay for the work done, in accordance with the employment contract. In the normal course of things, the employer, managing the company, issues orders to the employees for the efficient performance of work tasks, all to make a profit for the company. On the other hand, employees act according to the employer's orders and, based on work, realize the right to wages and other benefits. However, it is a special situation when the company where the employee works, becomes the subject of bankruptcy proceedings, when bankruptcy procedure is opened against it. The moment of bankruptcy initiation is a moment that significantly changes the existing situation in the company and leaves great consequences for employees, primarily in terms of the payment of their wages and the payment contributions, based on the Labor Law and employment contracts. By initiating bankruptcy proceedings against the employer, the possibility of settling claims is reduced (Višekruna & Rajić-Ćalić, 2019, p. 253). Since remuneration is one of the elements of the employment relationship, which differentiates it from other legal relationships, the uncertainty faced by the employee is clear, because earnings represent the source of existence of the employee and his family, and the means of living are rarely provided outside of the employment relationship (Višekruna & Rajić-Ćalić, 2019, p. 253). Namely, the employee makes his abilities available to the employer. Bearing in mind the central place of work in the individual and collective experience of people (Kovačević, 2021, p. 29), earning a salary is one of the basic assumptions and motives for establishing an employment relationship on the part of the employee, since for the majority of employees, the salary represents the exclusive or predominant source of means of support (Kovačević, 2021, p. 44). It can be said that earnings are foremost among workers' motives because gratuity is never assumed in an employment relationship (Tintić, 1972, p. 303). This achieves economic security, which is a condition for human dignity and peace. Therefore, countries through their social policy, try to achieve elements of social and economic stability and security in the labour market. There, through various mechanisms, state institutions provide support to employees, including in situations of employer bankruptcy. The goal of such action by the state is to create at least temporary security for employees, who are in an unenviable situation anyway. This is all the more important since the initiation of bankruptcy proceedings can produce wider social consequences, primarily a drop in production rate and a decrease

in the employment rate in a certain area. This can be extremely important if the employer employs the majority of the population in a certain geographical area, which is why the value of that employer cannot be assessed only in an economic terms (Kovačević, 2016, p. 100).

Traditionally, two mechanisms stand out as optimal – the privileged order of settlement of employee claims in relation to the claims of other bankruptcy creditors and the establishment of a special institution that will take over the settlement of (parts of) unpaid employee claims (Višekruna & Rajić-Ćalić, 2019, p. 254). Certainly, the bankruptcy of the employer can lead to an unfavourable position for the employees, such as the loss of their job, which can have negative financial consequences for them and their families, which can negatively affect the quality of life of the employees. Employees who have lost their jobs due to bankruptcy, may not have health insurance, which may affect their ability to receive adequate medical care. In addition, employees may have problems exercising their rights, especially if they are not sufficiently informed about administrative and judicial procedures for protection in case of bankruptcy of the employer.

3. Protection of employees' claims under the Bankruptcy Law – Privilege system

When talking about the bankruptcy procedure in domestic positive law in Serbia, the Bankruptcy Law, adopted in 2009, regulates the conditions, initiation, and opening of bankruptcy, which is carried out against legal entities, as well as the issue of dividing the bankruptcy estate. Therefore, it can be said that the aforementioned law is a fundamental source of Serbian bankruptcy law (Radović, 2017, p. 55). When we talk about the protection of employment claims in Serbia, we can say that it is provided to employees and former employees. Employed workers are those who had this status at the time of the opening of bankruptcy proceedings, while former employees are those persons whose status ceased before the opening of bankruptcy proceedings (Radović, 2017, p. 172). By introducing the privileged status of employees in case of bankruptcy of the employer, in orderto settle their monetary claims, the state stands in the way of protecting their existence. By giving priority in payment to employees, one value is essentially protected, which must be above any property right – the right to life (Radović, 2017, p. 169). The system of privileges introduced by the legislator to protect employees, but also to protect the persons they support, dates back to the twelfth century. In continental Europe, the priority of employees in the settlement of claims

was first provided for by the Bankruptcy Law in Tuscany, in 1713, and later in the French Civil Code from 1804 (Mucciarelli, 2017, p. 265). The aforementioned method of protecting the position of employees through priority in the collection of claims is today a generally accepted standard of bankruptcy law, with differences between national systems, which are reflected in the different scope of privilege, different ranking of creditors, etc. In Serbia, positive bankruptcy law classifies only two rights of employees in the category of privileged claims, namely: 1) the right to earnings and 2) the right to contributions for pension and disability insurance. From a legal and technical point of view, the right to payment of due and unpaid contributions is not the right of employees, but rather the obligation of the bankrupt debtor (employer) towards the social insurance fund (Republican Pension and Disability Insurance Fund), which represents the subject of public law, that the state established by law and entrusted by law with public authority to carry out compulsory social insurance activities (Marjanović, 2013, p. 259).

The main goal of bankruptcy proceedings is to satisfy creditors. To avoid competition between different creditors, a system of rules was created that should enable settlement from the debtor's property not to be carried out according to the principle of prior tempore, potior iure, but to have an organized system of distribution of the debtor's assets (Višekruna, 2013, p. 17). In general, the creditors of the bankrupt debtor are legal and natural persons who have claims against him, which arose before the opening of bankruptcy proceedings. To report a claim and acquire creditor status, it is important that the claim can be expressed monetarily, and it is not important whether it is due, establishedor contested... (Todosijević & Slijepčević, 2022, p. 210). To successfully conduct bankruptcy proceedings, categories of creditors are established, namely: 1) bankruptcy creditors; 2) secured creditors (creditors with rights to separate settlement); 3) pledgers; 4) creditors with title over property (that comprises the bankruptcy estate) (creditors with an exclusion right);and 5) creditors from the financial security agreement (Todosijević & Slijepčević, 2022, p. 211).

The Bankruptcy Law prescribes the application of the principle of equal treatment and equal position, with the fact that certain categories have a privileged status. That privilege consists of the right of separate and priority settlement, which ordinary bankruptcy creditors do not have. Therefore, in the first place we have the so-called creditors in bankruptcy. These are creditors who assert a property claim against the bankruptcy estate, i.e. all persons who wish to participate in the bankruptcy estate (Radović, 2005, p. 175). Bankruptcy creditors have a monetary claim, but it is not secured.

Secured creditors have a monetary claim secured by a right of lien and right of retention (the right to keep the debtor's belongings, which are located in the creditor's possession), as well as the right to settle on belongings and rights that are kept in public books and registers. In third place, as we said, are the creditors with title over property (creditors with an exclusion right), who do not have monetary claims against the debtor, but only ask for separation, i.e. "exclusion" of property located in the debtor's possession. Finally, we also have pledgers (pledge creditors), who do not have a monetary claim, but have a lien on the debtor's property. In bankruptcy proceedings, the costs of the bankruptcy proceedings are settled first. After settling the expenses, the "liability of the bankruptcy estate" is settled. The liabilities of the bankruptcy estate include:

1) obligations caused by the actions of the bankruptcy administrator or in another way, by the management, cashing out and distribution of the bankruptcy estate, and which obligations do not include the costs of bankruptcy proceedings;
2) obligations from a bilateral indenture, if its fulfilment is required for the bankruptcy estate or must follow the opening of bankruptcy proceedings;
3) obligations arising from unjustified enrichment of the bankruptcy estate;
4) obligations towards the employees of the bankrupt debtor, incurred after the opening of bankruptcy;
5) obligations based on credits and loans.

Creditors of the bankruptcy estate are creditors whose claims arose after the opening of bankruptcy proceedings, and according to Article 105 of the Bankruptcy Law, these include 1) the proposer of bankruptcy proceedings; 2) employees of the bankrupt debtor, who claim wages, incurred after the opening of bankruptcy proceedings; 3) creditors from bilaterally binding contracts; 4) claims of banks in the name of credit or loan, taken by the bankruptcy trustee; 5) claims on behalf of the actions of the bankruptcy trustee regarding the cashing out and distribution of the bankruptcy estate. Only after the settlement of the costs of the proceedings and the settlement of the creditors of the bankruptcy estate as a whole, it is moved to the settlement of the creditors of the bankrupt debtor, by first settling the privileged/secured creditors (separate and pledged) within five days, and unsecured creditors are settled from the remaining funds, according to payment orders (Todosijević & Slijepčević, 2022, p. 212).

When we talk about payment orders, the following schedule has been established, i.e. classes of creditors:

1) first payment order – unpaid net wages of employees and former employees, with interest from the due date until the date of opening of bankruptcy proceedings in the amount of minimum wages for the last 12 months before the opening of bankruptcy proceedings, as well as unpaid contributions for pension and disability insurance for the last 24 months before the opening of bankruptcy proceedings;
2) second payment order – claims based on public revenues, due in the last three months before the opening of bankruptcy proceedings, except for contributions for pension and disability insurance of employees;
3) third payment order-bankruptcy creditors' claims;
4) fourth payment order – claims arising in the 24 months before the opening of bankruptcy, based on unsecured loans, which were approved by persons related to the debtor-in-possession (the bankrupt debtor).

Employees appear as creditors of the bankruptcy estate for all claims arising from the employment relationship, after the opening of bankruptcy proceedings, if the law does not provide otherwise (Višekruna, 2013, p. 21). Privileged claims have only those persons who were employed by the bankrupt debtor, that is, by the employer against whom bankruptcy proceedings have been opened. In almost all legal systems, employees are one of the privileged categories of creditors (Wood, 2007, p. 250). The reason why employees are privileged is multiple, e.g. solidarity towards employees (in case of bankruptcy they have no means of living), and sometimes a political philosophy that puts the interests of workers first. In any case, almost everywhere they deserve priority (Wood, 2007, p. 250). Certainly, the privileging of employee claims is one of the oldest measures of social policy, which is incorporated into bankruptcy regulations (Radović, 2017, p. 168). In case of bankruptcy, there is the biggest and basic risk for employees, which is the loss of employment with the employer. Another problem faced by employees of bankrupt employers is the impossibility of concluding multiple employment contracts with different employers, thereby reducing the risk of losing one of their jobs. Unlike employees, other bankruptcy creditors conclude contracts with numerous persons or at least have that possibility in terms of the dispersion of entrepreneurial risks, so the opening of bankruptcy against some of these

persons does not have to have significant economic consequences for the creditor (Radović, 2017, pp. 168-169).

When settling financial claims of employees, until the opening, i.e. initiation of bankruptcy, it is observed that they relate to minimum wages, and to claims in wages, above the minimum, and up to those stipulated by the collective agreement, as well as to other claims (severance pay, recourse), which were also not paid in the period before the bankruptcy (Ajnšpiler-Popović, 2015, pp. 10-11). Employees, as bankruptcy creditors for all claims related to the period before the opening of bankruptcy against the employer, in respect of unpaid minimum wages in the last year before the opening of bankruptcy, as well as for contributions for the last two years with default interest, are settled as creditors of the first payment order, as stated above. However, it should be borne in mind that for other claims from the employment relationship, in the name of severance pay, holiday pay, and wages above the minimum, employees are creditors of the third order of payment (Ajnšpiler-Popović, 2015, pp. 10-11), and are settled equally with the claims of all other creditors (Radović, 2017, p. 177). Thus, employees can report the same claim as privileged and non-privileged bankruptcy creditors (Lubarda, 2013, p. 601).

Claims of employees based on wages for the period before one year from the date of opening of bankruptcy procedure are not privileged claims and are settled within the third payment order (Radović, 2017, p. 178). At the same time, the legislator does not treat earnings as a single whole but separates it into "parts", i.e. into net earnings and gross earnings. Net salary is the amount that is paid to the employee on the current account. Net salary represents the sum of basic salary, part of salary for work performance and increased salary. Gross salary means the net salary to which taxes and contributions for pension and disability, social insurance, unemployment insurance, as well as personal income tax paid to the state are added. It is important to note that privileged status is given only to net earnings up to the minimum wage, while contributions that accompany earnings are treated differently (Kovačević, 2022, p. 331). Therefore, earnings are not viewed as a single category, inextricably linked with contributions, but contributions for pension and disability insurance are separated, which strictly speaking are not claims of the employee, but claims of the state (Kovačević, 2022, p. 331; Marjanović, 2012, p. 259). Therefore, it is quite justified to point out the lack of such a legislative solution, which relativizes the privileges given to employees, because why should the law especially protect the state, when the state is the strongest creditor that can protect itself? (Kovačević, 2022, p. 331). Therefore, we can conclude that in

such a legal situation, the state first protects its own claims, by privileging its claims in the name of contributions over other claims of a creditors of lower rank.

What is significant is that the Bankruptcy Law stipulates that all creditors must report their claims, after the opening of bankruptcy proceedings. The bankruptcy judge makes a decision on the opening of bankruptcy proceedings, which approves the proposal for initiation of bankruptcy proceedings. On the same day, the decision is delivered to the bankruptcy debtor, the petitioner, as well as to the organization that carries out the procedure for forced debt collection. The application period cannot be shorter than 30 days or longer than 120 days from the date of publication of the advertisement in the Official Gazette. Both secured and unsecured claims are reported. The announcement on the opening of bankruptcy proceedings is drawn up by the bankruptcy judge, immediately after he issues a decision on the opening of bankruptcy. What is significant is that from the moment of the publication of the announcement about the opening of bankruptcy on the notice board of the court, the legal consequences of the opening of bankruptcy begins. Article 51, paragraph 2 of the Bankruptcy Law stipulates that creditors acquire the status of a party only by submitting their claims. The same rules apply to employees of an employer who has been declared bankrupt. Thus, employees must report all their claims due before the opening of bankruptcy, to be able to exercise their rights later on. In the aforementioned report, the amount of claims based on the principal debt must be separated from claims based on default interest. However, if this is not done, it is not an obstacle to acting on such an application. The same situation applies to the application of employee claims based on unpaid wages because the aforementioned claims applications are submitted to the bankruptcy trustee, along with all other applications. After the deadline for reporting claims, the bankruptcy judge submits all claims reports to the bankruptcy trustee. Therefore, it also includes applications submitted by employees for their due and unpaid claims with the employer, and employee applications will not be separated from other applications, nor will special rules apply to their applications. Furthermore, the bankruptcy trustee determines the merits, scope and payment order of each claim and, accordingly, compiles a list of recognized and disputed claims, as well as the order of settlement of secured creditors and pledgers. As part of that, the bankruptcy trustee also examines the merits of the employee's claims, and from a procedural point of view, the position of the employees is the same as the position of all other creditors who report their claims.

It is obvious that all creditors, including employees, must submit applications for their claims in the event of the opening of bankruptcy against the employer and that after the statement of the bankruptcy authorities and other creditors, it will be considered recognized if they are not contested by the bankruptcy administrator, nor by any other creditor (Ajnšpiler-Popović, 2015, p. 12). However, if one of the aforementioned disputes a reported claim, then the person whose claim is disputed will be sent to litigation, in which he will seek to establish his disputed claim. The situation is the same with the employee, whose claim is contested by another person. If the person who disputed the claim at the examination hearing does not initiate a lawsuit within eight days, the same claim is considered acknowledged. Although the majority of employees' claims are monetary, i.e. they are in the name of unpaid wages and unpaid contributions for pension and disability insurance, employees can also file labour disputes to determine the illegality of the termination of the employment contract, in which situations they most often claim compensation for damages caused by the unjustified termination of the employment contract, in the amount of lost earnings. In that case, the realization of the mentioned right is also conditioned by the filing of the bankruptcy claim report, as well as the subsequent statement about the mentioned report.

4. Protection of employees' claims through guarantee institutions

In addition to the protection of employees' claims through the establishment of a privilege system, legal systems also know protection through the action of a special state institution, the so-called guarantee institution. Namely, the protection of employees' claims only through privileges proved to be insufficient (Radović, 2017, p. 181). One of the main measures to protect employees' claims in case of bankruptcy is the establishment of a special fund that would pay unpaid wages, severance pay and other benefits to employees. This fund is usually financed from contributions paid by employers and can compensate a part or all of the unpaid wages and other benefits to employees, depending on the national legislative framework. Certainly, the establishment and operation of a special institution through the payment of debts of debtors in bankruptcy is a form of state intervention in the labour market, to preserve social security and economic stability. Preservation of social peace, or at least its semblance, appears as the primary reason why the state does not want to allow market factors to operate independently in a market economy. The intervention of the state in case of

insolvency of the company, through the action of the guarantee institution, is very fast, certainly faster than the bankruptcy proceedings. Namely, in bankruptcy proceedings, its duration is uncertain, because it can last for years, while the existence of a guarantee fund makes it more likely that employees will be paid their claims within a few weeks or months (Secunda, 2016, p. 875). Certainly, it is unknown whether there will be a successful sale of the debtor's property, and whether all creditors will be successfully settled. Also, the existence of an independent guarantee institution has a positive effect on potential lenders towards the employer, because, in case of insolvency of the debtor, they will be able to collect from the funds available to the state guarantee institution. Therefore, it can certainly be said that the establishment of a special institution with the role of debt payment guarantor increases the level of security for creditors of the bankrupt debtor, including (former) employees. On the other hand, the guarantee institution can encourage the employer to undertake risky business moves and make wrong business decisions. The establishment of a guarantee institution improves the position of employees, but on the other hand, irresponsible and opportunistic behaviour of the employer is encouraged (Kovačević, 2022, p. 335). If the guarantee institutions are financed exclusively from the budget, this may have the effect of encouraging employers to take greater risks in business. They then have no incentive to work to save the company, because they know that the state will cover their debts to the workers (Višekruna, 2013, p. 142). Namely, in such a form of financing of the guarantee institution, which is partly the case with Serbia, the risk of business failure ultimately falls on the state. The essential disadvantage of the privilege system of employees' claims is that the possibility of settlement depends on the size, i.e. values of the bankruptcy estate. The greater the value of the property that enters the bankruptcy estate, the greater the chance of settlement of priority claims. But just giving priority, it turns out, is not a guarantee of settlement of employees' claims with the bankrupt employer. Therefore, if the bankruptcy estate is of small value, the chance of settling the employees' claims is also lower. Thus, it may happen that, although the employees have their priority claims, this will not be of great importance, if the bankruptcy estate is insufficient to satisfy all the privileged creditors. In such a situation, the state resorts to a guarantee system through special state bodies and organizations, which guarantee privileged creditors the possibility of settling their claims in the case of the debtor's bankruptcy.

In Serbia, there are both systems, that is, the privilege system and the guarantee system, and such a mixed claim protection system can be called a

"hybrid system". The largest number of countries accept this kind of system (Italy, France, Spain...) (Radović, 2017, p. 182). There are few countries, such as Estonia and the United Arab Emirates, that do not know any of the systems presented (Kovačević, 2022, p. 328; Sarra, 2016, pp. 909-910). Most of the OSCE countries (and this is because most of those EU countries are covered by the 2008 Directive on the protection of employees in the event of the insolvency of their employer) have a system that provides some priority to earnings and pension contributions, and also provides and pension and/or wage guarantee schemes in scenarios of employer insolvency (but more often the guarantee is only provided for wages) (Secunda, 2016, pp. 909-910). Also, in most countries there is a guarantee institution: sometimes it is an association (France); exceptional bankruptcy estate per se (Norway); more often a fund – usually public (Belgium, Finland, Ireland, Hungary, Slovenia, United Kingdom); or a public agency (Australia, Finland, Italy, Israel, Spain, Sweden) (Salmerón &Luque, 2005, p. 8).

When we talk about the protection system in Serbia, as mentioned, a "hybrid system" is applied, which means that in one part of the protection of employees' claims, the Bankruptcy Law is applied (for privileged claims), and for other claims, the Labor Law (for guaranteed claims). It is worth mentioning that the guarantee system is provided for by ILO acts, namely in Convention 173 and Recommendation 180. In this sense, in Serbia, based on the Labor Law from 2005, the Solidarity Fund was established, which has the status of a legal entity and operates as a public service, based in Belgrade. The main activity of the Fund is securing and paying claims. The Solidarity Fund started operating on July 8, 2005. The activity of the Fund is securing and paying claims to employees of an employer against whom bankruptcy proceedings have been opened in accordance with the Labor Law. The Solidarity Fund determines the right to payment of claims and conducts the procedure in accordance with the Labor Law and the Law on General Administrative Procedure. Namely, for employees to exercise their rights to the collection of monetary claims from the bankrupt employer, they must submit a request to the Solidarity Fund for the realization of unsettled and overdue claims. The conditions for submitting a request to the Solidarity Fund of the Republic of Serbia are:

1) that the employee was employed by an employer against whom bankruptcy proceedings were opened and that the employee's claims were determined by a decision of the Commercial Court in accordance with the law governing bankruptcy proceedings;

2) that the employee was employed on the day of the opening of the bankruptcy proceedings or in the period of the last nine months before the opening of the bankruptcy proceedings;
3) that the employee's claims have not been paid in accordance with the law governing bankruptcy proceedings or that they have not been paid in full for the period for which the Fund makes the payment (they are entitled to the difference up to the level of rights established by the Labor Law).

It is the responsibility of the former employee to properly fill out the request form. Any other form and form of request to the Fund will be rejected as irregular in accordance with the Law on General Administrative Procedure. The former employee submits a request to the Fund within 45 days from the date of receipt of the decision establishing the right to claim, in accordance with the law governing bankruptcy proceedings. Upon receipt of the request and the necessary documentation, the Solidarity Fund conducts an administrative procedure and determines the timeliness of the submitted request and the completeness of the documentation, then based on the facts and evidence, the Solidarity Fund's management board makes a decision.

Former employees are entitled to payment of:

1) wage and salary compensation (sickness up to 30 days) during absence from work due to temporary inability to work according to regulations on health insurance, which the employer was obliged to pay in accordance with the Labor Law, for the last nine months before the opening of bankruptcy proceedings;
2) compensation for unused annual leave due to the fault of the employer, for the calendar year in which the bankruptcy proceedings were opened, if he had this right before the opening of the bankruptcy proceedings;
3) severance pay due to retirement in the calendar year in which bankruptcy proceedings were opened, if the right to pension was exercised before bankruptcy proceedings were opened;
4) compensation based on a court decision made in the calendar year in which bankruptcy proceedings were opened, due to an injury at work or occupational disease, if that decision became legally binding before the opening of bankruptcy proceedings.

Funds for the work of the Solidarity Fund are provided from the budget of the Republic of Serbia. If the annual calculation of income and expenses

of the Fund determines that the total income of the Fund is greater than the expenses, the difference is paid to the budget account of the Republic of Serbia and allocated for the implementation of the active employment policy program. It is important to note that, if the employee's claims have already been partially paid in the bankruptcy proceedings, the employee is entitled to the difference only up to the level of rights established by the Labor Law. Therefore, the employee can exercise his rights in the Solidarity Fund only if the claims have not already been collected during the bankruptcy proceedings. Although at first glance the procedure for protecting employees' claims in the Fund seems clear and efficient, in practice this is not always the case. Namely, the Fund may request the submission of additional data and documents of importance for decision-making. The employees must submit the requested information to the Fund within 15 days from the date of receipt of the request. That deadline, in practice, is not enough for the employees to organize, collect and submit the required documentation to the Fund on time. Completing documents takes the most time in the process of determining rights and represents a big problem for employees (Višekruna, 2013, p. 119). Also, insufficient information among employees about the existence of the Solidarity Fund and its powers is a big problem. In this field, it is necessary to make greater efforts to inform the employees about their rights in case of bankruptcy of the employer. In practice, it seems that a large number of employers do not want employees to learn about their employment rights, and the level of interest in the rights in the Solidarity Fund is even lower. Also, a special problem is defining the deadline for submitting requests, which created serious problems for the Fund in its practical operation. Namely, the Labor Law stipulates that the request to the Fund must be submitted within 15 days from the day when the legally binding decision establishing the right to claim was delivered, and such a short deadline may have been deliberately established to make it difficult to fulfil the requirements for submitting a request to the Solidarity Fund. Also, our Labor Law did not regulate the position of employees in the case that the bankruptcy procedure is not carried out, due to the insufficiency of the bankruptcy estate. Namely, the Bankruptcy Law in Article 13 stipulates that, if the assets of the bankrupt debtor are not sufficient to cover the costs of the proceedings or are of insignificant value, the bankruptcy proceedings shall be concluded without delay. In that case, employees cannot report their claims, and therefore cannot realize them in the Fund (Višekruna, 2013, p. 121). Also, it is important to note that the final decision on the request, within the Solidarity Fund, is made by the board of directors in the form of a decision. The employee can file an appeal against

the decision within eight days from the day of receipt. The Minister of Labor Affairs will decide on the appeal within 30 days from the date of its submission. It should be borne in mind that wages and salary compensation are paid in the amount of the minimum wage, while compensation for unused annual leave is paid by the bankruptcy trustee's decision, and at most up to the amount of the minimum wage (Šunderić & Kovačević, 2019, p. 359). Certainly, by establishing a claim protection mechanism through the creation of the Solidarity Fund, Serbia made a significant step forward in that field, which raised the level of legal security and financial certainty for employees and their families. However, a large number of practical problems in the work of the Fund and poor information among employees are the reasons that undermine its effectiveness.

5. Conclusion

Based on the above, it can be concluded that a double system of protection of employees' claims in case of bankruptcy of the employer, where they were employed, has been established in Serbia. On the one hand, the protection of claims can be realized in bankruptcy proceedings, where the existence of a privileged position for employees in relation to ordinary creditors is foreseen, for certain claims from the employment relationship. That is, therefore, the privilege system, provided for by the Bankruptcy Law. On the other hand, the Labor Law foresees a claim guarantee system, through the establishment of the Solidarity Fund, with the role of paying wages and other claims from the employment relationship, based on a legally binding decision confirming such rights. But, despite everything, there are a large number of problems in the Fund's practical work. Primarily, the weak awareness of the employees about its existence and its powers stands out. Most often, employees are informed about their rights when the bankruptcy proceedings are already underway, and then it may already be too late to protect their claims. Therefore, additional progress should be made in this field. It is necessary to raise the awareness of employees about their rights in case of bankruptcy of the employer, long before it happens. Employees must be familiar with the legal regulations and procedures (administrative and judicial) that apply in the case of bankruptcy so that they can protect their claims and exercise their rights. But, on the other hand, it is necessary to support and engage employees to achieve this protection. First, employees must report their claims in accordance with the laws and deadlines in force in the country where the employer is located. Second, employers should comply

with the law and regularly pay wages and other benefits to employees to reduce the risk of bankruptcy. If bankruptcy occurs, employers should provide all necessary information and support to employees so that they can report their claims and exercise their rights. Third, employees must follow the bankruptcy procedure to be informed about all the steps that are being taken. They can join unions or employee groups that deal with the protection of employee's rights in the event of bankruptcy. Better organization and operation of trade unions is one of the possible instruments for strengthening the position of employees in case of bankruptcy of the employer, but the potential of trade union organization is still not sufficiently used. It is important to note that the best way to protect employees' claims in case of bankruptcy of the employer is to take preventive measures. This may include regular monitoring of the employer's financial situation, concluding an employment contract with clear and precise regulations on the payment of wages and other benefits, as well as concluding an insurance contract in case of bankruptcy. One thing is indisputable, employees are a key factor in protecting their claims in case of bankruptcy of the employer. They must be informed and active in the fight for their rights. On the other hand, from a legal point of view, the possibility of extending the deadlines for submitting requests to the Fund by employees should be considered, which is currently only 15 days from the receipt of a legally binding decision. Also, the legal system in Serbia does not prescribe the position of employees with the Solidarity Fund, as a guarantor body, when bankruptcy is not opened due to insufficient property of the bankrupt debtor or if its value is insignificant. Therefore, the Solidarity Fund remains an instrument of claims protection with great potential, but unfortunately still unused.

Also, the claim privilege system is not perfect either, as it is significantly limited in scope. Namely, although certain claims of employees have the character of priority and privilege, the above-mentioned subject limitations make this kind of protection insufficient to a significant extent. Therefore, restrictions on the existence of privileged claims should be gradually reduced, i.e. the catalogue of rights that rank among the privileged claims of employees should be expanded. One thing is certain: without adequate systems for the protection of employees' claims against the bankrupt employer, there is no economic and social security for employees and their families. The state should make additional efforts to further improve protection mechanisms, both through the system of privileges and through the guarantee systems.

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PRAVNI REŽIM ZAŠTITE POTRAŽIVANJA ZAPOSLENIH U SLUČAJU STEČAJA POSLODAVCA U REPUBLICI SRBIJI

REZIME: Kada se otvori postupak stečaja poslodavca, to često dovodi do neizvesnosti i problema za njegove zaposlene. Jedan od najvećih problema u ovakvoj situaciji je zaštita potraživanja iz radnog odnosa. Zaposleni imaju pravo na isplatu svojih potraživanja iz radnog odnosa, kao što su neisplaćene zarade, naknade za prevoz, topli obrok, regres za godišnji odmor i slično. Međutim, u slučaju stečaja poslodavca, ova potraživanja su ugrožena i postoji rizik da zaposleni neće biti u mogućnosti da ih naplate u potpunosti, čime se narušavaju osnovni principi radnog zakonodavstva. Iz tog razloga dolazi do intervencije države kroz mehanizme zaštite novčanih potraživanja iz radnog odnosa. Osnovni mehanizam je davanje statusa privilegovanih poverilaca sa prioritetnim potraživanjima, a pored toga i mehanizam zaštite potraživanja pred posebnom garantnom institucijom. Da nema takve intervencije države, ostvarivanje ovih prava bi bilo otežano. Međutim, čak i uz intervenciju države, ostvarivanje navedenih prava nije zagarantovano. U tom smislu, ovaj rad će razmatrati modele zaštite potraživanja zaposlenih, u slučaju stečaja, uz uočavanje praktičnih problema na tom polju.

Ključne reči: *stečaj, potraživanja, zaposleni, zarade, radni odnos.*

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INTERNET FRAUD

ABSTRACT: Internet law represents one of the youngest branches of law, which emerged from the need to expand the existing and create a new regulatory framework that would regulate the internet and introduce the necessary legal security and protection for its users. Internet Law or Cyber Law is largely intertwined with the Law on Information and Communication Technology, as a legal field which encompasses the regulation of contractual relations established by means of information technology, the right to privacy and data protection, freedom of speech and intellectual property, internet security, copyright on computer program codes and databases, criminal offenses arising from actions on the internet, as well as the tax aspects of online goods and services exchange. In contrast to the broader scope of IT law, Internet law refers to a narrower segment of this legal field related to the internet, regulation of internet management at all levels, management of internet domain names and IP addresses, etc. Internet law (or Cyber law), in a broader sense, encompasses those parts of the legal system and legal domains that are related to the internet and provide protection to its users. To address the issue of domain name registrant liability and determining their identity, it is necessary first to explain the governance structure of the internet and the informational and legal nature of internet domains. Although the internet is often said to be free and belonging to everyone, this complex system does not operate entirely on its own, which means that it is not perfect to the extent that its structure is fully automated.

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Addressing the topic of internet fraud and educating colleagues and the general public are aimed at preventing fraud. The lack of awareness about how internet scams operate continually leads to new victims, and insufficient knowledge of legal provisions and potential penalties can create potential perpetrators of this crime. When complex topics are explained in simple terms, it represents a significant step in educating individuals, both in the legal and technological aspects from a legal perspective.
Such academic work should not deter people from using the Internet, nor should it present an obstacle to progress and the digitization of difficult and time-consuming paperwork obligations. Instead, the objective is to timely educate individuals so that the utilization of the digital world can be integrated into all segments of society as quickly as possible. This will facilitate the functioning of daily life, including business operations, while still remaining within the bounds of legal regulations. Therefore, it is extremely important to educate people on how to avoid internet fraud.

Keywords: *Internet law, criminal acts, privacy, data protection, internet fraud.*

1. Introductory remarks

The management of the Internet today represents a complex structure and processes, which to some extent dictate the regulation and policies concerning the Internet (Milić & Đukić, 2022, p. 215). Given the sensitive relationship between Internet service providers and users, the right to privacy, collection of personal data (including trading and misuse of the same), protection of payment card and bank account data, represent one of the biggest problems facing network users today. Therefore, the companies that collect the mentioned data are expected to do everything in order to prevent hacking attacks and other illegal activities. The other side of the coin is the legal activities of providers, social networks and platforms that collect personal data, and which, with the formal consent of users, use the same for the purpose of gaining profit and increasing the value of their own companies. Monitoring of user activities by official governments and state institutions is a special problem that threatens both the neutrality of the Internet in general and the privacy and personal interests of individual users (Popović, Budimlić & Puharić, 2009. p. 9).

Internet security, the protection of intellectual property and copyright rights online and the ease with which they can be violated in the online sphere are also very widespread problems for which there is no 100% protection, but

through legal regulation, attempts are made to establish the greatest possible degree of legal security and unhindered use of the Internet. One of the important areas covered by Internet law is the criminal law protection of legal and natural persons who use the network for primary or business purposes. In addition to the repressive effect by prescribing the type and degree of sanctions for the execution of certain legally prescribed acts, internet law also deals with the study of network weaknesses and its improvement, which significantly contributes to the prevention of criminal acts in cyberspace. In almost every developed country in the world, special, well-trained and equipped departments within the police and prosecutor's offices have been established to solve these cases. Although it is up to the state authorities to provide protection to Internet users, a lot can be prevented by informing citizens, ie employees in companies, about all important aspects of protection and preventive action. That is why it is important to be informed regularly, because technology is developing rapidly, so those who use it to commit criminal acts improve and upgrade it just as quickly. These types of crimes have the highest growth rate in the world. The global network enables cross-border action, so these problems are no longer part of national legislation, but a problem of the whole world, the solution of which must be coordinated and united. The current Criminal Code of the Republic of Serbia, the section that regulates criminal offenses committed on the Internet or in connection with high technologies, is called Criminal offenses against the security of computer programs in the Republic of Serbia. Thus, the offense of Damage to computer data and programs is provided, for which, depending on the amount of damage caused, a prison sentence of up to 5 years can be imposed. Also, the same is prescribed for entering, destroying, changing or concealing software or digital records, as well as hardware information carriers that prevent their use, i.e. significantly hinder the transfer or processing of data that serve state bodies or other institutions (committing the criminal act of computer sabotage) the amount of the fine. For the production and introduction of a virus into someone else's computer or computer system, the penalty can be up to 2 years in prison, depending on whether it caused damage.

According to the Criminal Code of the RS, the traditional act of Fraud has also acquired its own special form if it was committed on the Internet or in connection with computer data. Due to the degree of importance of protection on the Internet against fraud, the legislator prescribed a penalty of up to 10 years in prison for frauds that cause damage of over 1,500,000 RSD.

For unauthorized access to a protected computer, computer network and electronic data processing, a penalty of 6 months is prescribed, and if the

information thus obtained is used, the penalty can reach 2 years in prison, while if serious consequences occur, 3 years. The law also prohibits the actions of preventing or limiting access to a public computer network, i.e. the use of someone else's computer or network.

2. The concept of Internet fraud

By their nature, internet fraud is the closest to economic crime, and in the literature, almost without exception, these phenomena are treated as a form of economic crime.Internet fraud involves the use of online services and software with Internet access to defraud or exploit victims (Bjelajac & Filipović, 2021). The term internet fraud generally covers cyber crimes that occur over the Internet or via e-mail, including crimes such as identity theft, phishing, and other hacking activities designed to steal money from people. Internet scams that target victims through online services represent millions of dollars in fraudulent activity each year. And the numbers continue to grow as Internet usage increases and cybercriminal techniques become more sophisticated.

Internet fraud is a type of cyber fraud or fraud that uses the Internet and involves concealing information or providing false information in order to defraud victims of money, property and inheritance. Internet fraud is not considered a single, independent crime, but includes a series of illegal and illegal actions committed in cyberspace, but it differs from theft because in this case the victim voluntarily and knowingly gives information, money or property to the perpetrator. Another characteristic is that the perpetrators are separated in time and space.

Today's computer technology can be misused in many ways. One of the forms of abuse of information technology is fraud through the Internet. It represents the most widespread form of computer crime and is predominantly of a monetary nature (acquiring illegal material benefits). A special form of Internet fraud is the "Ponzi scheme" – a method of committing a criminal offense of fraud with the help of computers and the Internet. It usually starts with false promises, which seem like a fairy tale, offers enrichment "overnight", there are also certain indispensable conditions, such as investing money at the very beginning and involving more people, etc. The issue of misuse of information technology is not only a legal issue. Since this is a problem that causes large financial losses, it is necessary to consider the economic impact on economic flows in each country (Bjelajac, 2011).

In relation to traditional forms, cyber crime is rapidly changing its forms and forms of expression, borders between countries, and the type of victim.

These acts are usually difficult to detect, even more difficult to prove, and remain undetected for a long time because the injured party does not have to suffer damage that is immediately visible. Thanks to the constant development of technology, new and more complex forms of cybercrime appear every day. New, more subtle and significantly more dangerous forms of criminal behavior are emerging, hitherto unknown to criminal practice (Bošković & Marković, 2015. p. 297). The perpetrator can attack a specific computer or network from anywhere, regardless of where it is located, so space and time frame have little significance in most cybercrime acts. Criminal acts are committed in the information environment, i.e. faster and easier and in more diverse ways and most importantly mostly anonymously, because today more than ever the network provides ideal conditions for perpetrators to cover up their criminal acts. Only a small number of committed criminal acts are reported and investigated. When financial institutions, banks and business entities come forward as victims, the reason for not reporting is the fear of losing the trust of their business partners. Also, in the event of an attack being published, clients are afraid that their data is not in safe hands and are looking for new business partners. A small number of injured persons are aware that they have been a victim of a criminal act, in most cases even if a report is made it is too late to take any appropriate measures.

Computer embezzlement is difficult to detect, because control is often complicated and evidence is hard to come by. The main characteristic of this part is the acquisition of illegal property benefits by appropriating values from the one to whom these values are entrusted. As information technology when it comes to the economy was first introduced in financial institutions, the first abuses were committed in banks, but in large business systems with several thousand employees. Computers and information technology were used in embezzlements in which: falsification of accounting documents, issuance of fictitious invoices, issuance of fictitious travel orders; creation of fictitious payrolls, creation of fictitious inventory list, creation of fictitious customers, artificial increase in stock of goods, inaccurate presentation of losses on goods, falsification of credit reports, creation of false financial data, etc. cases.

2.1. The concept of "Ponzi Schemes"

Charles Ponzi was born Carlo Pietro Giovanni Guglielmo Tebaldo Ponzi on March 3, 1882, in Lugo, northern Italy. They say that Ponzi showed criminal tendencies early on, stealing from his parents and even the parish priest. Although few people outside of financial circles know who Charles

Ponzi was, most can guess what he is known for, given his last name. The term "Ponzi scheme" is known as an investment scam in which money from a steady stream of new investors is used to pay off earlier investors while simultaneously enriching the scheme creator.

The scheme or scam continues until, as it always does, it collapses when there are no more new investors. Although Ponzi was not the first to use this scam to make money, he is the most famous and therefore the one it is named after. In 1920, Ponzi organized a company called the Securities Exchange Co. in which he sold shares advertising 50% interest after 90 days. Funds received from investors were to be used to purchase an international coupon for redemption in the US. Instead, Ponzi used funds received from new investors to pay off old investors.

Soon, many people heard about his teachings and learned his art of deception. A new financial fraud was born, called "Ponzi scheme". The "Ponzi Scheme" flourished with the advent of the Internet, everyone is networked, there is no excessive protection, it is easy to get in touch with ignorant people, and also all data is poorly protected. In a word, a utopia for fraudsters, as well as for the most famous "Ponzi scheme".

2.2. The concept of "pyramid schemes"

Pyramid schemes are so named because their compensatory structures resemble a pyramid. The scheme starts with a single point at the top where there are original members and becomes progressively wider towards the bottom as people are recruited by all levels of recruits.

A pyramid scheme is an unsustainable business model that involves making money primarily by involving other people in the scheme, usually without any product being sold or any service performed. This type of scam comes in many variations.Typically, pyramid schemes recruit members at seminars, home meetings, by phone, email, mail, or social networks. In a typical pyramid scheme, you have to pay to join. The basis of the scheme is to convince people to join and also participate with their money. In order for everyone in the scheme to make money, there must be an infinite number of new members. In reality, the number of people who are willing to join the scheme, and therefore, the infinite amount of money that goes into the scheme, which quickly disappears. Some pyramid scheme promoters pretend that their real intention is to introduce products that are overpriced, or of poor quality, difficult to sell, or of lesser value. Making money by employing people is his main goal. Promoters at the top of the pyramid make money by getting people

to join the scheme. They charge fees and other charges to other people who are subordinate to them. When the scheme fails, relationships, friendships, and even marriages can be destroyed because of the money lost in the scam. It is illegal to promote or participate in a pyramid scheme.

In a variation of a pyramid scheme, investors at each level charge start-up fees that are paid by the next layer of investors. Part of this compensation is paid to those in the upper layers of the pyramid. In the end, no one stays to recruit. The pyramid is collapsing.

2.3. The legal nature of "Ponzi" and "Pyramid" schemes

What is the difference between a "Ponzi Scheme" and a "Pyramid Scheme"?

A Ponzi scheme is a mechanism to attract investors with the promise of future returns. The operator of a "Ponzi scheme" can only maintain the scheme as long as new investors are attracted. On the other hand, the "Pyramid Scheme" recruits other people and encourages them to further bring in other investors. A member in a "Pyramid Scheme" earns only a portion of his income and is "used" to generate profits by members higher up the pyramid.

The essential difference between these two scams is that a "Ponzi scheme" generally only involves investing in something from its victims, with a promised return at a later payout date. "Pyramid schemes", unlike "Ponzi schemes", usually offer the victim the opportunity to "make" money by recruiting more people into the scam. What they have in common is that both fraud schemes operate 90 percent over the Internet these days.

Consider a very simple example where Person A promises a 10% return to Person B. Person B gives person A 1,000 euros with the expectation that the value of the investment will be 1,100 euros in one year. Then, Person A promises a 10% return to Person C. Person C agrees to give Person A 2,000 euros. With €3,000 now available, Person A can raise Person B by paying him €1,100. In addition, person A can steal €1,000 from the collective fund if he believes he can get future investors to give him money. In order for this plan to succeed, person A must constantly receive money from new clients in order to pay back older ones.1 Another example: "Entrepreneur" announces that he is working on a very profitable business that guarantees high income and profits, but he needs a loan, i.e. cash Money. "Investor" A gives "Entrepreneur" a loan of $1,000 with a 90-day repayment term and $100 interest payable on the 90th day. During those 90 days, the "Entrepreneur" finds new "Investors" B and C promising them the same. At the end of the period, he offers the "Investor" to return the 1000 dollars and the interest of 100, but also not to raise the principal

and the interest, offering again the same excellent conditions. He owns the money for that purpose because he also received funds from "Investors" B and C. Most of the "Investors" take it slow and do not withdraw money, i.e. reinvests. Individuals who do not believe are paid on the spot, from the money he received from others, and this raises the "rating" of the "Entrepreneur" as a business and serious person. The number of "Investors" is increasing. This operation lasts for a while and ends with the "Entrepreneur" running away with the money or announcing payment problems or bankruptcy, because there was a disruption in the "market" from which he had a large income. The most common way of "fishing" gullible people and victims is carried out through phantom companies. Its characteristics are a very well-arranged website with several presentations, but the deeper it is investigated, the more often it comes to the fact that the company has registered headquarters in a virtual office, no employees, fake pictures of employees, fake business partners, zero completed and closed deals. It is mostly about very sweet-talking and sharp-witted people who are ready to "sell" any story without any compassion, usually the one that the "victim" wants to hear, and it all sounds too good to be true.

Internet fraud in Serbia, as well as in the world, can be characterized as a form of organized crime, according to the facts that all conditions are met. The characteristics of organized crime are significant when defining organized crime. Precisely in relation to the primary elements (characteristics) of organized crime, two understandings are dominant: according to the first understanding, when defining organized crime, the primary element is the criminal organization, i.e. the structure of the criminal group, while according to the second understanding, the type of criminal activity is decisive for the existence of organized crime, undertaken by a criminal group (Bjelajac, 2013, p. 53).

One of the problems in Serbia is that there is not a sufficiently developed system of combating internet fraud and fraud generally done digitally. This is regulated by Article 208, paragraph 1 of the Criminal Code of Serbia, which reads: "Whoever, with the intention of obtaining an illegal property benefit for himself or another, misleads someone by falsely presenting or concealing facts or keeps him in a delusion and thereby leads him to harm himself or others property, does or does not do something, will be punished with imprisonment from six months to five years and a fine."[1]

[1] The perpetrator causes a person to make a decision to do or not do something. This can be done by doing, not doing, and even by conclusive actions. If the crime was committed against a spouse, relative, adoptive parent or adoptee or other persons with whom the perpetrator lives in a common household, criminal prosecution is undertaken by private criminal action (Features of the criminal offense of fraud, Dragan Jovašević, selection of court practice, no. 7/96, p. 12).

Given that internet fraud is carried out via high-tech devices, the department for high-tech crime carries out work and tasks under the jurisdiction of the Republic Public Prosecutor's Office in connection with criminal acts of high-tech crime, fulfilling the obligations assumed by the Law on the Ratification of the Convention on High-tech Crime, coordinating work with special by the department of the Higher Public Prosecutor's Office in Belgrade for high-tech crime, as well as the coordination of work with the prosecution offices of general jurisdiction, in connection with criminal acts of high-tech crime.

2.4. "Nigerian Scam"

One of the most well-known forms of fraud via the Internet is the *Nigerian fraud* and it belongs to the group of frauds that are carried out by investing a certain amount of money by the defrauded person in certain businesses, of course with the fraudster's previous promise that a significantly higher monetary profit will be achieved. This type of fraud appeared for the first time in the 1980s and was associated with the rapid economic growth of Nigeria. Frauds were mainly carried out by sending business offers to foreigners for trade or exploitation of oil, thanks to which Nigeria has become economically stronger. Frauds were carried out by sending fake messages via computer or e-mail, about alleged winnings on games of chance, and by sending messages related to humanitarian contributions, messages related to "love and business offers", inheritance of property, usually some unknown relative. carried out by initially selecting the victim and later persuading her by social engineering methods to pay a certain amount of money in advance. That amount of money is in most cases incomparably smaller than the amount they should receive as a benefit from a fund, that is, from the sender of the message. By e-mail, the recipient was asked for help in order to obtain large sums of money, from a few hundred thousand to a few tens of millions dollars, and upon payment he would receive a certain percentage of the promised earnings. According to the citizens of Serbia who were victims of this form of fraud, the action of execution was carried out in several ways: by sending notifications about false winnings of games of chance, after which the victims paid certain sums of money to enable them to withdraw the prize, as well as by sending notifications about inheritance using who are victims of fraud using social engineering methods led to believe that they have inherited a certain amount of money, after which they pay certain sums of money to enable them to pay out the inherited money (Urošević, 2009, pp. 145-156).

3. Organized crime, Cyber crime and White collar crime relations

As legitimate business also implies a certain organization and exhibits features of institutionalization, the question arises what is the difference between "white collar" crime, more precisely, its subtype of corporate crime and organized crime. Edwin Sutherland believes that this difference actually does not exist. way, is joined by Larry Siegel, who classifies both of these types of crimes in the same group, where he sees the only difference in the fact that "white collar" crime is about the illegal activity of individuals and institutions that entered the business in order to make a profit legitimate business, while organized crime as well as legitimate business implies a certain organization and exhibits features of institutionalization, the question arises what is the difference between "white collar" crime, more precisely, its subtype of corporate crime and organized crime. Edwin Sutherland believes that these differences actually do not exist In a way, he is joined by Larry Siegel, who classifies both of these types of crimes in the same group, whereby he sees the only difference in the fact that "white collar" crime is about the illegal activity of individuals and institutions that are in entered the business in order to gain profit through legitimate business, while organized crime involves illegal activities of subjects whose goal from the beginning was profit obtained in an illegitimate way. Their common point is, among other things, the effort to violate the principles of free market operations. Thinking similarly, Mark Ђaler subsumes both of these types of crime under the category of "illegal business activities" as a common name for the sale of illegal goods and services to customers who know that these goods and services are illegal. The aforementioned Edwin Sutherland once emphasized that "financial the damage caused by "white-collar" crime, although huge, is still less important than the damage done to social relations and social morals" (Bjelajac, 2013, p. 51). Unlike conventional crime, which has an insignificant effect on social institutions, as some authors point out this form crime strengthens social disorganization, and its perpetrators, respected members of society, are very rarely prosecuted due to the de facto immunity they enjoy as respected businessmen. In most cases, frauds on the Internet are well organized by several people, which indicates to us that it is an organized crime. The bridge that connects "white-collar" crime and cyber crime (in this case fraud via the Internet) is exactly organized crime. When we talk about the definition of cyber crime, for now there is no generally accepted definition, nor is there agreement on whether "cybercrime" is a new type or just a new

form of execution of an already existing crime (Bošković & Marković, 2015, p. 296).

In 2001, the EU Commission defined cyber crime in the broadest possible sense, so that cyber crime means any criminal offense that in any way involves the use of information technology. At the XI Congress of Crime Prevention and Criminal Justice held in Bangkok in 2005, the Working Group of the United Nations defined cyber crime as a general term that includes criminal acts committed using a computer system or network, in a computer system or network, or against a computer system. or networks. Professor Vidoje Spasić presents computer (cyber) crime as crime committed in a digital environment and represents a specific form of illegal behavior in which computer networks appear as a means, goal or evidence of the commission of a criminal act (Spasić, 2006, p. 107; Vidojković, 2015, p. 4).

Although there is no single definition, what everyone agrees on is that cyber crime is criminality that is specific in terms of its structure, scope, and peculiarities, and that everywhere in the world it records progressive growth and the appearance of new criminal acts (Bošković & Marković, 2015, p.295).

The main characteristics of *white-collar* crime are the following: a) it is committed by persons with a prestigious social status within the profession they perform, and a white-collar criminal is any person with a high socio-economic status who violates the laws that determine their professional activity; b) appears in activities related to bank insurance, trade, railways, state institutions, inspection or tax services, police and customs services, medicine; includes fraud in business operations, stock exchanges, suspicious transactions arranged by illegal trades, transactions in currency and bills of exchange, fake accounts, insurance fraud, malfeasance related to tax evasion, corruption; c) social power and reputation and privileges are used to acquire enormous material goods, and enormous damage is caused to society (measured in tens of billions of dollars per year in developed countries) (Bjelajac, 2013, p. 50). What is most dangerous about this form of crime is that it leads to both large material losses, as well as damage to the health, injuries, and even death of a large number of people, (Ignjatović, 1996, p. 207), since in addition to fraud with prices, false presentation of income, money laundering and multinational and bribery, training and violation of quality and health regulations, environmental regulations, etc. The "de facto" abolition of arrest and criminal prosecution is relatively high, not only due to the lack of awareness of the degree of social danger of this act ("useful embezzlement"), but much more due to the fact that the perpetrators are "reputable businessmen" with high corruption potential. However, this sends

signals from the social elite themselves that malfeasance is justified and useful. Because the types of "cybercrime" can be: computer fraud, computer sabotage, computer terrorism, computer vandalism, piracy, all via the Internet, of which financial fraud is the most common. For all the mentioned criminal actions, it is necessary that persons are educated in that field, highly informed, socially trained for such a thing, as well as with previous experience. We conclude that the connection between "cyber crime" and "white collar" crime is not only in criminal liability, but in those specific characteristics that the perpetrators of these crimes possess and share with each other.

When we compare the profiles of the perpetrators of *white-collar* crimes and the current profiles of the perpetrators of "cyber crime", we get a synergy of character traits. Given that the Internet has not always existed, we can only assume whether "white-collar" crime would be effective for the first time through the Internet. In all of the above, and looking from the perspective of criminal responsibility, the methods of "catching" criminals, as well as the type of protection of potential victims, we can freely say that any financial fraud in the real world shares operational tools and principles as well as Internet fraud, the so-called cyber crime.Criminal groups are increasingly turning to the use of various aspects of high technology, primarily in order to facilitate criminal activities, but also to create new types of illegal activities that represent a symbiosis of "classic" organized crime and high-tech crime (Komlen-Nikolić, Gvozdenović, Radulović, Milosavljević, Jeković, Živković, Živanović, Reljanović & Aleksić, 2010, p. 183).

Is it possible for criminal association of individuals or groups in virtual space? Yes, but not in the way that individuals would probably imagine it. In the simplest terms, when an individual has a "quality" idea on how to pull off a particular scam, but lacks the financial means or equipment, or simply wants to reduce the risk of getting caught by 50%, they will team up with another individual. What is special about such an "organization" is that its members never have to see each other, nor know the identity, appearance or any private information of other persons with whom they are connected in this way.

4. The legal nature of Internet fraud

"Cybercrime" and everything that falls under it (financial fraud, etc.) is an international problem and there are several international documents that provide for the sanctioning of such crimes by states and somehow classify certain forms of "cybercrime". In this regard, the Recommendation of the Council of Europe from 1989 and the Convention of the Council of Europe

on cyber crime from 2001, which entered into force in 2004, Serbia ratified and implemented through our legal system in 2009, are significant. An additional protocol to the Convention was adopted by the Council of Europe in Strasbourg on January 28, 2003, and it refers to the prosecution of acts of a racist and xenophobic nature committed with the help of computers, i.e. it regulates behavior related to the spread of hatred, bigotry, intolerance through computer systems towards racial, religious , national groups and communities. The convention on cyber crime consists of four chapters that define basic terms, determine legislative measures, prescribe international cooperation and, finally, allow the possibility of protecting new elements. In this way, each country is able to identify the nature of the criminal offense and the way in which it is recorded or defined in its legal system (Convention on High-Technological Crime, Budapest, 2001).

It should be noted that the Council of Europe recognized various forms of computer abuse in 1976, but nine years passed from the recognition of the problem to the initiation of the initiative, and another eleven years passed until this law was enacted.

At the level of the European Union, there are several other documents that deal with this issue, the most important of which is the "Framework Decision on Attacks on Information Systems" from 2005. All these documents aim to reduce the disparity between national laws, introduce new powers in discovery and proof cyber crime and the improvement of international cooperation in the fight against high-tech crime.

Although in today's society it is impossible to function completely without the use of computers and modern technology, in addition to useful use, it can also be used for illegal, unlawful purposes, primarily for the acquisition of illicit material benefits. In addition to the conclusion that it is necessary to adopt appropriate material and procedural laws that contain measures in accordance with the Convention on High-tech Crime, and in accordance with the capabilities of each country, it is necessary to emphasize the fact that a greater level of attention from the scientific and professional public is needed, at least in the segment necessary to adequately appreciate the characteristics of misuse of information technology. The issue of Internet abuse, especially when it comes to phenomena involving various types of fraudulent manipulation of computer elements, is not only a legal issue.

All significant forms of computer crime are defined in our law as criminal offenses covered by paragraph (XXVII) of the Criminal Code of the

RS – Criminal offenses against the security of computer data.[2] It should be emphasized that in addition to criminal acts directed against the security of computer technology, there are a large number of traditional criminal acts that are carried out faster and easier with the help of the Internet, the perpetrators are more difficult to track down, and the consequences are far more serious and greater (Kojić, 2015, p. 472).

Some crimes are very difficult to prove. Specific knowledge is required for its discovery, as well as the collection of evidence. Internet frauds are also included in such crimes, which are very dangerous, given that they represent in most cases a form of financial fraud.4 Given that computer crimes are committed in a specific environment, called cybernetic or cyber space, this entails a multitude of new and interesting implication. Therefore, bearing in mind this important characteristic of computer crime, "the fact that it is carried out in the information environment, gives it certain specificities that are reflected in the fact that crime in the information environment is carried out easier, faster, more diverse, more extensive and, as is particularly significant from the point of view of criminals, more anonymous (Petrović, 2004, p. 6). Advantages that lead to the spread of Internet (cyber) crime can be: 1. Sophisticated technology that makes detection difficult; 2. Incompetence of the investigator; 3. Victims do not use safety tips and often do not feel threatened by such actions.

A special problem in this area is the collection of evidence related to the perpetrators of such crimes. The problem is that the communication and organization of the group takes place virtually and there are no procedural provisions that would regulate such a situation. In fact, the positive legal procedural legislation in our country does not recognize the peculiarities of internet abuse and, in this sense, does not contain adequate procedural norms.

[2] High-tech crime includes a set of criminal offenses against the security of computer data:Damage to computer data and programs; Computer sabotage; Creation and introduction of computer viruses; Computer fraud; Unauthorized access to a protected computer, computer network and electronic data processing; Preventing and limiting access to a public computer network and Unauthorized use of a computer or computer network.In addition to the above-mentioned crimes, this area also includes crimes against intellectual property, property and legal traffic, where computers, computer networks, computer data, as well as their products in material or electronic form appear as the object or means of committing crimes. In accordance with this legal definition, the area of high-tech crime also includes crimes where computers and computer networks appear as a means of committing criminal acts of fraud, abuse of payment cards on the Internet, abuse in the field of electronic commerce and banking, abuse of children for pornographic purposes on the Internet (so-called child pornography), hate speech on the Internet (spreading national, racial, religious hatred and intolerance, etc.).

5. Concluding considerations

In order to achieve the most adequate protection and the most effective mechanism for combating crime via the Internet, we should start by improving the legal regulations. In the legal text, the most complete criminal procedural system of reaction to this form of crime must be built. High-tech crime as a transnational social phenomenon calls into question basic values in the largest number of modern countries, which is why it is crucial to create a protection system in accordance with internationally accepted standards that have yielded positive results in practice. In this context, the key thing is the exchange of information between entities fighting crime at the international level, the collection and exchange of evidence, as well as the implementation of joint investigations by law enforcement agencies of different countries. The legislation of the Republic of Serbia very well regulates computer crime and generally financial fraud via the Internet in the material part of the criminal law matter, because it is harmonized to a significant extent with international standards. However, serious investments are needed in personnel, i.e. in persons who are authorized to act in these cases. There is a need for permanent education and training in accordance with world trends in the fight against Internet crime, as well as raising the level of information literacy of these persons, all with the aim of their more efficient work.

Not all legal systems have the same level of protection, ie. they do not have the same approach to the concept of privacy, which can range from a subjective right, the realization of which is a personal matter of the individual, to a category that elevates personal data and the right to protection of the same to the level of basic human rights, as proclaimed by EU regulations. Our legislation followed the same path by passing the Personal Data Protection Law of the RS[3], which began to be implemented in August 2019, and which was written according to the model and in accordance with the General Data Protection Regulation

[3] This law regulates the right to the protection of natural persons in connection with the processing of personal data and the free flow of such data, the principles of processing, the rights of persons to whom the data refer, the obligations of handlers and processors of personal data, the code of conduct, the transfer of personal data to others states and international organizations, supervision over the implementation of this law, legal remedies, liability and penalties in case of violation of the rights of natural persons in connection with the processing of personal data, as well as special cases of processing. This law also regulates the right to the protection of natural persons in connection with the processing of personal data by competent authorities for the purposes of preventing, investigating and detecting criminal offenses, prosecuting perpetrators of criminal offenses or enforcing criminal sanctions, including preventing and protecting against threats to public and national security. , as well as the free flow of such data.

"GDPR". In this regard, our legislation is in step with European regulations, with the aim of harmonizing personal data protection mechanisms on a global level, as a particularly sensitive and important category of data, which actually represent the private, personal sphere of each individual.

Are there frauds with illegal acquisition of property benefits over the Internet, are they theft and abuse? of personal data over the Internet, is it simply an unwanted form of communication over the Internet, what is very important and serious for our country and our people, as well as for global civilization, is that the Internet sky extends over the entire planet, but there are very few pillars of support that give security to the inhabitants of the planet. Insufficient control, insufficient legal regulations, insufficient amount of will to improve and deal with the Internet and its security. Of course, we must never leave reality, in the end everything happens in the material world, but the digital world, which is full of fraud and all kinds of criminal acts, needs to be arranged, as well as the material world, so that we do not run away from the material world into the digital one, and at the same time, from the digital to the material, because as the years go by, the digital world will be increasingly represented. The digital world without fraud and other criminal acts will be a legally and ethically regulated environment for the functioning of business and legal activities. Prevention is first of all necessary and most important, and probably the most effective. The step we should have already taken is education or recruitment of personnel for this form of crime. The creation of international cooperation at the highest level in the prevention and fight against cyber crime is also of key importance, because cyber crime, first of all, knows no borders.

This study aimed to explore the prevalence and underlying factors of internet fraud, shedding light on its impact on individuals and society. Through an extensive analysis of real-life cases and in-depth interviews with victims, to uncover significant findings that contribute to understanding of this complex issue. The point was to reveal a disturbingly high prevalence of internet fraud across various online platforms, with a particular emphasis on identity theft, phishing scams, and online investment fraud. Additionally, to identifify several key factors that increase individuals' vulnerability to fraud, such as lack of digital literacy, overconfidence in online security, and susceptibility to social engineering tactics. The implications of these findings and statements are far-reaching. Law enforcement agencies can leverage this insights to enhance their investigative techniques and develop targeted strategies to combat internet fraud. Financial institutions can employ from these to strengthen their fraud detection systems and educate customers about

potential risks. Moreover, the point of this topic and research was to highlight the urgent need for comprehensive educational programs to empower individuals with the knowledge and skills necessary to protect themselves online. Additionally, incorporating more qualitative methods, such as focus groups or observational studies, could provide a deeper understanding of the psychological and behavioral aspects of internet fraud victimization. Looking ahead, future research should explore emerging forms of internet fraud, such as cryptocurrency scams or deepfake-based fraud, as technological advancements continue to evolve. Additionally, collaborative efforts between researchers, law enforcement agencies, and industry stakeholders are essential to stay ahead of fraudsters and develop proactive measures.

In conclusion, this study underscores the urgent need to address internet fraud, which poses significant threats to individuals, organizations, and society at large. By leveraging these findings, policymakers, law enforcement, and cybersecurity experts can work together to develop effective preventive measures, raise awareness, and mitigate the devastating impact of internet fraud. Only through a multidisciplinary approach can we create a safer digital environment for everyone.

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INTERNET PREVARE

REZIME: Internet pravo predstavlja jednu od najmlađih grana prava, nastalu iz potrebe proširenja postojećeg i stvaranja novog regulatornog okvira koji bi regulisao internet i uveo neophodnu pravnu sigurnost i sigurnost njegovih korisnika. Internet pravo ili sajber pravo je u velikoj meri isprepleteno sa Zakonom o informacionim tehnologijama i komunikacionim tehnologijama, čija pravna oblast obuhvata uređenje ugovornih odnosa uspostavljenih sredstvima informacionih tehnologija, pravo na privatnost i zaštitu podataka, slobodu govora i intelektualne svojine, internet bezbednost, autorska prava na šifre kompjuterskih programa i baza podataka, krivična dela proistekla iz radnji na internetu, kao i poreski aspekt razmene dobara i usluga onlajn. Za razliku od šireg

obima IT prava, internet pravo podrazumeva uži deo ove pravne oblasti koji se odnosi na internet, regulisanje upravljanja internetom na svim nivoima, upravljanje nazivima internet domena i IP adresama itd.

Internet pravo (ili sajber pravo) kako se još naziva, u širem smislu, obuhvata one delove pravnog sistema i pravne oblasti koje su vezane za internet i pruža zaštitu korisnicima interneta. Da bi se pristupilo problemu odgovornosti registranta imena internet domena i utvrđivanja njegovog identiteta, potrebno je prvo objasniti upravljačku strukturu interneta, odnosno informatičku i pravnu prirodu internet domena, ime se mora razumeti. Iako se za internet često kaže da je besplatan i da pripada svima, ovaj složeni sistem ne funkcioniše sam po sebi, odnosno nije savršen u meri u kojoj je njegova struktura automatizovana.

Bavljenje internet prevarama kao temom i edukacija kolega i šire javnosti ima za cilj sprečavanje prevara. Nedostatak svesti o tome kako internet prevare funkcionišu kontinuirano dovodi do pojave novih žrtava, dok nedovoljno poznavanje zakonskih odredbi i potencijalnih kazni može stvoriti potencijalne izvršioce ovog krivičnog dela. Kada se kompleksne teme objasne jednostavnim jezikom, to predstavlja značajan korak u obrazovanju pojedinca, kako u pogledu pravnih, tako i tehnoloških aspekata problema, ali iz pravnog ugla.

Ovakav jedan akademski rad ne bi trebalo da odvraća ljude od korišćenja interneta, niti da predstavlja prepreku napretku i digitalizaciji teških i dugotrajnih administrativnih obaveza. Umesto toga, cilj je da se ljudi pravovremeno edukuju kako bi digitalni svet mogao što pre da se integriše u sve segmente društva. To će olakšati svakodnevno funkcionisanje i poslovanje, uz poštovanje zakonske regulative. Zbog svega prethodno pomenutog, izuzetno je važno edukovati ljude o tome kako da izbegavaju internet prevare.

Ključne reči: *Internet pravo, krivična dela, privatnost, zaštita podataka, internet prevare.*

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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.

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

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

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There is an example:

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

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

There is an example:

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

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

There is an example:

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

If the cited source has been written by two authors:

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

There are some examples:

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

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

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

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

There is an example:

(Cvijanović, Matijašević Obradović & Škorić, 2017)

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

There is an example:

(Cvijanović et al., 2017)

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

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

There is an example:

(Savić et al., 2010)

If the author of the cited text is an organization:

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

There is an example:

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

further citations: (SASA, 2014)

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

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

There is an example:

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

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

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

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

If there exist two or more texts in one citation:

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

There is an example:

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

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

There is an example:

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

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

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

There is an example:

Published in *Politika* (2012)

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

If the personal correspondence is cited:

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

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

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

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

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

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

A note:

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

There is an example of a reference in a footnote:

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

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

If the laws and other regulations are cited:

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

There is an example:

(The Code of criminal procedure, 2011)

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

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

There is an example:

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

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

There is an example:

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

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

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

There is an example:

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

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

There is an example:

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

An important note:

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

The example:

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

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

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

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

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

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

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

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

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

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

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

References:

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

Criminal Justice and Security and University of Maribor Press. DOI: 10.18690/978-961-286-174-2
10. Regulation (EU) No. 1052/2013 establishing the European Border Surveillance System (Eurosur), OJ L 295 of 6/11/2013.
11. Škorić, S. (2016). *Uticaj poslovnog imena privrednog društva na njegovo poslovanje – doktorska disertacija* [*The influence of the business name of the company on its business – doctoral thesis*]. Novi Sad: Pravni fakultet za privredu i pravosuđe u Novom Sadu.
12. Škulić, M. (2007). *Krivično procesno pravo* [*Criminal Procedural Law*]. Beograd: Pravni fakultet Univerziteta u Beogradu i JP Službeni glasnik.
13. Uredba o ekološkoj mreži Vlade Republike Srbije [The Ecological Network Decree of the Government of the Republic of Serbia]. *Službeni glasnik RS*, br. 102/10.
14. Veljković, N. (2017*). Indikatori održivog razvoja: Srbija i svet* [*Sustainable development indicators: Serbia and the world*]. Downloaded 2017, October 22 from http://indicator.sepa.gov.rs/o-indikatori
15. Zakonik o krivičnom postupku [Criminal Procedure Code]. *Službeni glasnik RS,* no. 72/11, 101/11, 121/12, 32/13, 45/13, 55/14 and 35/19.