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Type of work	References	In-text citation
Book (a single author)	Goldstein, A., (1994). *The ecology of aggression*, Plenum Press, New York.	(Goldstein, 1994:80)
Book (a number of authors)	Konstantinovic-Vilic,S.,Nikolic-Ristanovic, V., Kostic, M., (2009). *Kriminologija (Criminology),* Nis, Pelikan print.	First in-text citation: (Konstantinovic-Vilic, Nikolic-Ristanovic, Kostic, 2009: 35). A subsequent in-text citation: (Konstantinovic-Vilic, et all., 2009: 77)
Joint authorship (a group of authors)	*Oxford Essential World Atlas* (7th ed). (2012). Oxford, UK: Oxford University Press	(Oxford, 1996: 100)
An article or a chapter in a book with an editor	Kostic, M., Miric, F., (2009).Ustanove za izvršenje krivičnih sankcija-pozitivno zakonodavstvo i strana regulativa-stanje i perspektive,(Facilities for execution of criminal sanctions -positive legislation and international regulations, state and perspectives) / In Djukanovic, P. (ed), *Proceedings of penology* /. - Banja Luka, Penological organization of KPZ, 2009, Vol.1, No.1, pp. 10-32.	(Kostic, Miric, 2009: 295)
Journal article	Papageorgiou,V., Vostanis, P., (2000).Psychosocial characteristics of Greek young offenders, *The Journal of Forensic Psychiatry*, Vol.11., No.2., 2000, pp.390-400	(Papageorgiou et all, 2000: 397)
Encyclopedia	(2009). *The Oxford International Encyclopedia of Legal History*. Oxford, UK: Oxford University Press	(Oxford, 2009:33)
Institution (as an author)	Statistical Office of the Republic of Serbia, Monthly statistical bulletin, No. 12 (2013)	(Statistical Office RS, 2013)
Legal documents and regulations	Execution of non-custodial sanctions and measures Act, Official Gazette RS, No. 55 (2014)	Footnote: Article 1. Execution of non-custodial sanctions and measures Act, Official Gazette RS, 55/2014
Court decisions	Case Ap.23037/04 *Matijasevic* v. Serbia	Footnote: Case Ap.23037/04 Matijasevic v. Serbia
Online sources	Ocobock, P., Beier, A.L., (2008). *History of Vagrancy and Homeless in Global Perspective*, Ohio University Press, Swallow Press, Retrieved 31 November, 2015, from http://www.ohioswallow.com/book/Cast+Out	In-text citation: (Ocobock, Beier, 2008)

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EDITORIAL

Dear Readers,

The second issue of the scientific journal ***Facta Universitatis*: Law and Politics** for the year 2018 contains articles from different fields of law, social sciences and humanities.

Prof. Srdjan Golubović, LL.D., Full Professor, Faculty of Law, University of Niš, and **Prof. Nataša Golubović, PhD,** Full Professor, Faculty of Economics, University of Niš, submitted the paper titled ***"Goals of the National Bank of Serbia",*** where they examine the legal position of the National Bank of Serbia and analyze the objectives entrusted to this institution by domestic legislation. In line with the dominant monetary paradigm, the main goal of the central bank of Serbia is price stability. After the global financial crisis, financial stability is increasingly mentioned as the objective that central banks implement. This also applies to the central bank in Serbia (National Bank of Serbia), which has a clear mandate to take account of financial stability, in addition to monetary stability. Finally, as an important subject of economic policy, the National Bank of Serbia, by exercising the entrusted functions, also affects the achievement of other economic policy objectives. Domestic legislation precisely determines the hierarchy of the objectives of the central bank, considering that it explicitly stipulates that the National Bank of Serbia primarily takes care of monetary and financial stability, and only then it provides support for general economic policy, provided that it does not jeopardize the exercise of the basic objectives.

Prof. Marija Ignjatović, LL.D., Associate Professor, Faculty of Law, University of Niš, submitted the paper titled ***"Carriage of Goods by Sea as a special form of locatio-conductio operis faciendi in Roman law".*** The author analyses carriage of goods by sea, as a special form of *locatio-conductio operis faciendi* contract, which was particularly interesting in Roman law in the social circumstances related to the period after the Punic wars. It was the period of expansion of the Roman state, characterized by the development of maritime trade, which called for rapid and effective conclusion of contracts in legal affairs. Considering the growth of maritime trade, there was a need to introduce relevant legal instruments which would help meet the increasingly demanding trade of goods. This led to the creation of contract of carriage of goods by sea which was, in Roman law, a specific form of *locatio-conductio*, specifically *locatio-conductio operis faciendi*. In order to conclude and ensure the validity of this contract, in addition to the agreement between the contracting parties, it was also necessary to fulfill the conditions regarding the subject matter of the contract. The subject matter of this contract was not work itself or workforce, but the final result of work (*opus*), i.e. to transport goods from one place to another, and a fee (merces) paid for such services.

Assist. Prof. Dušica Miladinović-Stefanović, LL.D., Assistant Professor, Faculty of Law, University of Niš, **Prof. Saša Knežević, LL.D**., Full Professor, Faculty of Law, University of Niš, submitted the paper titled ***"Special measures for preventing the commission of sex crimes against minors: The example of Serbia".*** The authors note that The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007) was ratified and thus incorporated into the Serbian legal system in 2010,

which entailed the obligation to regulate this matter in greater detail by introducing specific measures aimed at preventing this type of criminal activity. This aim was accomplished by adopting the Act on Special Measures for Preventing the Commission of Sex Crimes against Minors (2013). This paper explores the aforementioned special measures for preventing sexual abuse of children, with particular reference to some controversial and disputable issues.

Assist. Prof. Aleksandra Ilić Petković, Assistant Professor, Faculty of Occupational Safety, University of Niš, **Jovan Simić,** Master Engineer in Occupational Safety, "Telekomunikacija" Ltd company for manufacturing, services and trade, Blace, and **Ivan Krstić,** Associate Professor**,** Faculty of Occupational Safety, University of Niš, submitted the paper titled ***"The Legal Framework of Occupational Safety and Health System in Serbia and Montenegro: a comparative review".*** One of the most important interests of each society is to establish the highest level of occupational safety and health, with the aim of minimizing all adverse effects: injuries at work, occupational diseases, and work-related illnesses. The ultimate imperative is the creation of such workplace conditions where the employee would have a sense of satisfaction in performing the assigned professional tasks. One way to achieve this ambitious goal is to have legal regulation that creates a platform for effective occupational safety. This paper analyzes the legislation on occupational safety and health in the Republic of Serbia and the Republic of Montenegro. By comparing these two legal systems in the field of occupational safety and health, the authors discuss the advantages and deficiencies of each, and provide some ideas for their improvement.

Srđana Dragomirović, Ph.D. student, Faculty of Economics, University of Niš, submitted the paper titled ***"Balanced Economic Growth from the Standpoint of Modern Growth Theories".*** The author notes that, for decades, world economy has been going through certain processes which vary from expansion to stagnation, and vice versa. For this reason, the factors or causes of economic growth are the key question which dates from the 1770s and Adam Smith's landmark work "An Inquiry into the Nature and Causes of the Wealth of Nations". Integrated through world economy, national economies are going through some of the changes which can be explicitly explained by observing the quality of economic growth. Thus, there are regions with sustainable development and balanced economic growth; on the other hand, there are expanding economies which are designated as developing countries. Distortion of world economy, observed through economic growth and inequality of national economies, from the standpoint of economic theories, can be explained by various models of economic growth.

Žarko Đorić, PhD Student, Faculty of Economics, University of Niš, submitted the paper titled ***"Anatomy and Consequences of Rent-seeking".*** Economic development and the success of economic policy through which the development goals are achieved can be interpreted as a product of political interactions between citizens and rulers, and social interactions between members of society in the broader sense. As structures and mechanisms of social order, institutions manage the behavior of a group of individuals within a given community. Institutions affect the accountability and responsiveness of officials to citizens and interest groups and, thus, determine the size of the rents created. Further, institutions influence the degree of political control of public bureaucrats and, thus, the distribution of rents within the public sphere. The aim of this paper is to present the concept of rent-seeking and, using an empirical case, to elaborate on its emergence, development and ultimate consequences.

Marija Stojanović, PhD Student, Faculty of Law, University of Niš, submitted the paper titled ***"Eugenics".*** Eugenics is a pseudoscience aimed at improving and controlling the genetic structure of the human species by selective breeding, which implies preventing inferior people from having children (negative eugenics) and encouraging superior ones to reproduce (positive eugenics). The Eugenics movement originated in the early 19th century and it was largely developed under the influence of Francis Galton in the United Kingdom and Charles Davenport in the United States. These two scientists advocated the selective breeding of desirable traits and reproductive control of undesirable traits in the human race. Racially-oriented eugenics had a dramatic expansion and its peak in Nazi Germany. Being the essence of many racial laws, eugenics was atrociously applied in practice by means of mass euthanasia, mass sterilization, extermination in gas chambers, and horrible experiments on people of lower races or those who were considered unworthy of living.

We hope you will enjoy reading the results of scientific research on the legal, economics, social and humanities issues that the contributing authors have chosen to discuss in their theoretical and empirical research. The multidisciplinary nature of the submitted papers and the authors' choice of current legal issues indicate that our scientific journal ***Facta Universitatis: Law and Politics*** is open to different approaches to the legal matter under observation and committed to publishing scientific articles across a wide range of social sciences and humanities. In that context, we invite you to submit research articles on topics of your professional interest.

We would like to extend our appreciation and gratitude to our distinguished reviewers whose professional attitude to double-blind peer review has significantly contributed to the quality of our scientific journal.

Editor-in-Chief
Prof. Miomira Kostić, LL.D.
Niš, 9th November 2018

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Original Scientific Paper

GOALS OF THE NATIONAL BANK OF SERBIA*

UDC 336.711(497.11)

Srdjan Golubović, Nataša Golubović

Faculty of Law, University of Niš, Serbia
Faculty of Economics, University of Niš, Serbia

Abstract. *Starting from the legal position of the National Bank of Serbia, the paper analyzes the objectives entrusted to this institution by domestic legislation. In line with the dominant monetary paradigm, the main goal of the central bank of Serbia is price stability. After the global financial crisis, financial stability is increasingly mentioned as the objective that central banks implement. This also applies to the central bank in Serbia (National Bank of Serbia), which has a clear mandate to take account of financial stability, in addition to monetary stability. Finally, as an important subject of economic policy, the National Bank of Serbia, by exercising the entrusted functions also affects the achievement of other economic policy objectives. It should be kept in mind that domestic legislation precisely determines the hierarchy of the objectives of the central bank, considering that it explicitly stipulates that the National Bank of Serbia primarily takes care of monetary and financial stability, and only then it provide support for general economic policy, provided that it does not jeopardize the exercise of the basic objectives.*

Key words: *National Bank of Serbia, objectives, monetary and financial stability, economic policy.*

INTRODUCTION

The Central Bank is a public institution that plays a major role in organizing, directing and regulating monetary flows. In contemporary legislation, central banks enjoy a high degree of independence and autonomy in exercising entrusted tasks and functions. In line with the dominant monetary paradigm, this legal status protects the central bank from political influence and allows it to achieve established goals and tasks. With the adoption

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* Prepared within the project *Sustainability of the Identity of Serbs and Ethnic Minorities in Border Municipalities in Eastern and Southern Serbia* (179013), which is carried out by the Faculty of Mechanical Engineering, University of Niš, and funded by the Ministry of Science and Technology of the Republic of Serbia.

of the Constitution in 2006, Serbia joined the group of countries that further strengthen the position of the monetary authority in relation to the executive power. However, mere introduction of a provision on the central bank independence in the highest legal act of the country is not enough. Other elements included in the law, which constitute the content of institutional, functional (operational), financial and personal independence, are also relevant for assessing the degree of independence of this institution. The position of the central bank vis-à-vis the executive power also depends on how the objectives, whose realization is the responsibility of the central bank, are defined. Until the outbreak of the global financial crisis in 2007, central banks primarily took care of price stability. In response to the crisis, central banks are reverting to a traditional role, which implies that central banks are increasingly taking into account financial stability. In this paper, after analyzing the legal status of the National Bank of Serbia, the authors consider its role in establishing and preserving monetary and financial stability. In the last part of the paper, obligation of the National Bank to support the realization of other economic policy objectives by performing its functions is investigated.

1. The Legal Articulation of the National Bank of Serbia Status

The inclusion of Serbia in the European integration process imposes the need to harmonize domestic legislation with the EU law. An integral part of this process is the implementation of EU standards for the central bank as an independent institution which, protected from the influence of political entities, conducts monetary policy in order to maintain price stability as a priority goal. The status, goals, tasks and organization of the central bank are regulated in detail by the Act on the National Bank of Serbia (hereinafter: NBS Act) of 2003, which has been amended several times to this day.[1] With the adoption of the Constitution in 2006, Serbia joined the group of countries that further strengthen the position of monetary authorities in relation to other forms of government by introducing a provision on the central bank independence in the highest legal act of the country.[2] According to positive regulations, the National Bank of Serbia (NBS) is autonomous and independent in conceiving and managing monetary and foreign exchange policy and performing other functions determined by the law. However, provisions that form the essence of institutional, functional (operational), financial and personal independence are much more relevant for assessing the legal status of the central bank. In this respect, the degree of institutional independence of the central bank is assessed on the basis of provisions defining the position of the National Bank of Serbia in relation to other forms of the government. Article 2 of the NSB Act stipulates that NBS and its bodies (including members of those bodies) "do not receive or seek instructions from state bodies and organizations, as well as from other persons, in the performance of their functions". In addition, the same article emphasizes the obligation of state authorities, organizations and other persons not to jeopardize the autonomy and independence of the central bank by their actions, i.e. they must not influence the central bank, its bodies or members of those bodies. Functional independence refers to the independence of the central bank in the performance of

[1] Act on the National Bank of Serbia, *Official Gazette RS,* 72/2003 and Act on Amendments to the Act on the National Bank of Serbia, *Official Gazette RS*, 55/2004, 85/2005 - dr. 44/2010, 76/2012, 106/2012 i 14/2015.

[2] According to Article 95 of the Serbian Constitution, “the NBS is autonomous and subjected to parliamentary supervision, to which it is accountable”; Constitution of the Republic of Serbia, *Official Gazette RS,* 98/06.

entrusted functions. In addition to conducting monetary and foreign exchange policy, according to Article 4 of the NBS Act, the central bank performs the issuing function, ensures smooth functioning of payment operations in the country and abroad, and conducts the process of restructuring of banks or members of the banking group. In exercising these functions, the National Bank of Serbia completely independently makes decisions upon the application of instruments and measures envisaged by the law. However, this independence does not include freedom in determining the objectives whose implementation is the responsibility of the central bank, nor is it left to the discretion of the central bank to decide which goal will have a priority. Instead, the law defines the objectives which the central bank is responsible to accomplish. As with other central banks, domestic legislation requires the central bank to be primarily concerned with price stability. In addition, the NBS is also obliged to take into account financial stability or implementation of other economic policy objectives, provided that this does not jeopardize the achievement of a priority objective.

Considering the bank financing method, decisions upon the use of its own funds, distribution of profits, or coverage of eventual losses (according to Article 78 of the NBS Act, if there are insufficient assets of the central bank, then budget funds or securities issued by the Republic of Serbia are used), the National Bank of Serbia enjoys a high degree of financial independence. A key indicator for assessing the degree of central bank independence is the introduction of legislative provision that prohibits financing of the budget deficit through the central bank lending (Lastra, 2006: 49). Article 62 of the NBS Act contains this prohibition which, in accordance with EU standards, implies the prohibition of granting loans, borrowings, overdrafts and other forms of credit facilities to the state, autonomous province or local self-government units, as well as to legal entities where the aforesaid subjects are founders or have majority control. The prohibition of fiscal financing also refers to the provision of guarantees or otherwise ensuring the settlement of obligations of the aforesaid legal entities. The financing of the fiscal deficit by monetary expansion is further limited by the prohibition of the purchase of securities issued by those entities at the primary financial market.

In addition to the aforementioned indicators, the degree of central bank independence depends on the manner in which management of the central bank is regulated (the role, status and structure of central bank bodies, the procedure of selection and duration of the governor's mandate, incompatibility clause, etc.). According to Article 12 of the NBS Act, NBS bodies are the Executive Board, the Governor and the Council. The Executive Board, consisting of the Governor, the Director of the Supervision Department (operating within the NBS) and the Vice Governors, is responsible for conceiving monetary and foreign exchange policy. The members of this body are elected by the National Assembly for a period of six years, whereby the Governor is elected at the proposal of the President of the Republic of Serbia, the Director of the Supervisory Board is elected at the proposal of the National Assembly Committee in charge of finance, and Vice Governors are elected at the proposal of the Governor of the NBS.

The introduction of these elements into the legislative framework enables the National Bank of Serbia, as an independent institution, to freely make decisions about the monetary policy program and the instruments for its implementation. The NBS enjoys this freedom even when performing other functions entrusted by the law. Such legal position protects the National Bank from political influence, i.e. the abuse of monetary policy in order to gain political benefits.

2. MONETARY AND FINANCIAL STABILITY

The central bank independence implies freedom in conceiving and implementing monetary policy programs, but it does not include freedom of choice in setting the goals. According to the prevailing paradigm at the beginning of the 1990s, monetary policy should have only one goal - price stability. Almost universal acceptance of this paradigm has triggered a wave of changes in the central bank legislation in order to emphasize price stability as the main goal to be attained by an independent central bank institution (Lastra, 2015: 58). Our legislation also does not envisage the disretion of the central bank in the choice of objectives, but explicitly determines the goals it will pursue. Thus, Article 3 of the NBS Act stipulates that the main goal of the central bank is "to achieve and maintaine price stability". The law, however, does not specify which inflation rate is acceptable, nor does it envisage the inflation rate by which monetary stability is considered to have been achieved. In an effort to define the legal framework for monetary policy implementation, the National Bank of Serbia made an agreement with the Government, which envisages that the stability-oriented monetary policy strategy will be implemented by using the target inflation rate regime.[3] The target inflation rate implies determining the inflation corridor within which the inflation rate can move, without disturbing price stability. What needs to be kept in mind is that, in this way, targeted inflation is defined as a medium-term objective, meaning that in the short run, depending on the market trends, deviations from the defined goal are possible. By anouncing the value of target inflation, the frameworks for deciding on monetary policy in the medium term are defined and, at the same time, they anchor and stabilize the inflationary expectations of economic actors.

The financial crisis in 2007 and the consequent recession showed that the stability of the financial system as a whole is extremely important for monetary stability. Financial institutions take up numerous risks in their operations. Banks, insurance companies, investment funds and other financial intermediaries entering into financial transactions face credit risk, liquidity risk, interest rate risk, but also other types of risks (operational and business risks). In the market economy, financial institutions which are exposed to excessive risk are prone to decline. Although a vital financial system can isolate negative effects of the collapse of certain financial institutions, the state does not stand aside but strives to enhance risk management and prevent the emergence of the so-called domino effect by developing appropriate regulatory framework. In their operations, financial institutions are obliged to comply with regulatory standards on capital adequacy, limitation of to exposure risk, allocation of reserves and classification of receivables. Compliance with these standards is ensured by the supervision of the operations of a particular financial institution (microprudential supervision), which can be entrusted to a central bank or a special regulatory body. There are two basic objectives of microprudential supervision: first, continuous improvement of the performance and structure of financial entities; and second, maintaining an adequate level of stability and trust in their operations. In this way, clients of financial institutions are protected from losses, given that the achievement of these objectives contributes to establishing an optimal relationship between maximizing profits (as the goal pursued by financial institutions in their operations) and preserving their liquidity and solvency (as objectives that the beneficiaries of financial services as

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[3] the Agreement between the National Bank of Serbia and the Government of the Republic of Serbia on targeting inflation, dated 19 December 2008; www.nbs.rs

well as the state are strongly interested in implementing). Regulatory standards, together with a clearly defined way of supervising banks, constitute a legal environment that should reduce the depositor risk and encourage competition in financial mediation (Božina, 2006: 109).

The financial crisis, which in the period 2007-2009 first affected the most developed countries and then expanded to other countries, showed that monitoring the stability and reliability of individual financial institutions is not enough. The basic reason for the limited scope of microprudential control should be sought in the changes of the modern financial system caused by deregulation, fast growth of the financial transactions and the emergence of complex financial instruments. In such conditions, the peril of systemic risk has been shown to be quite real, despite the effective risk management at the level of individual entities. Typically, systemic risk is defined as a disturbance caused by the fall of one or more systemically important financial institutions, which not only affects the financial system as a whole, but also negatively affects the functioning of the whole economy (Lastra, 2011: 200). Systemic risk jeopardizes the performance of key functions of the financial system: informative, allocative, but also the function of risk management and the transfer of financial assets. Failure or disruption in the performance of these functions entails high costs for both economic actors and the society as a whole. In addition to direct costs in the form of losses of the providers and beneficiaries of financial funds, or increased expenditures in the budget for the purpose of covering the losses of financial institutions, the crisis of the financial system also entails significant indirect costs. They are measured by lost confidence in the financial system institutions and, in connection with this, by reduced volume of deposits, higher costs of financial mediation and low competitiveness.

In order to maintain favorable macroeconomic performance, the central bank cannot stand aside by taking care only of monetary stability (Bernanke, 2013: 11). The global financial crisis has shown that, among all institutions, only the central bank has the necessary capacity to prevent the collapse of the financial system by using appropriate instruments. There are several reasons that justify the responsibility of the central bank for financial stability. First, the central bank is the only institution that is authorized to issue money as a legal means of payment and affect the level of direct liquidity. Secondly, the central bank is responsible for the smooth functioning of payment transactions. And finally, the central bank is, quite naturally, interested in sound financial institutions and a stable financial market, which facilitate the monetary policy transmission (Schinasi, 2006: 137).

In response to the global financial crisis, a range of goals whose implementation is the responsibility of the central bank is expanding because, in addition to the price stability as a priority goal, the responsibility of the central bank for financial stability is becoming more and more clearly established. The mandate of the NBS to conduct macroprudential policy is defined by the amendments to the Act on the National Bank of Serbia of 2010, which established the obligation of the NBS to undertake activities and measures within its competence in order to preserve and strengthen the stability of the financial system. With thus defined competence, the NBS joins a group of central banks whose responsibility for financial stability is almost equal to the responsibility for implementing the monetary policy. The accomplishment of this goal implies synchronized action of several different factors. The first line of defense includes the activities of banks and other financial institutions undertaken to minimize the risks they face in their operations. According to

the Banks Act[4], the bank is obliged to identify, measure and evaluate the risks to which it is exposed in its operations, and to manage those risks. Also, the bank is obliged to establish and implement an efficient internal control system in a manner that ensures continuous monitoring of the risks that the bank is exposed to or may be exposed to in its operations. The second line of defense is the exercise of a microprudential policy. In practice, different solutions can be distinguished, including the transfer of jurisdiction for this activity to special institutions and entrusting the function of supervision to the central bank. Our legislation envisages that the central bank is responsible for conducting control and supervision activities over banking and non-banking financial institutions. According to the NBS Act (Article 8a), Supervision Department was created within the National Bank of Serbia to supervise the operation of financial institutions. In performing this function, the Supervisory Board independently, or in cooperation with the Executive Board of NBS, performs numerous activities that can be systematized into three groups: a) prudential regulation (i.e. rules that financial institutions must apply in their operations in order to ensure efficient risk management and security of depositor funds; b) prudential supervision (efficient supervisory system, precise competence of the bodies involved in supervision, their operational independence, transparency, manner of controlling the prudence and legality of financial institutions' operations); c) application of corrective and coercive measures (the supervisory institution must have appropriate tools which will order the elimination of irregularities in operations, as well as the possibility of revoking the operating licenses for banks and non-banking institutions). Finally, the third level of defense of financial stability includes macroprudential policy. The NBS Act entrusts the central bank with the competence to conduct macroprudential policy. Under this Act, the National Bank of Serbia "determines and implements, within its competence, activities and measures in order to preserve and strengthen the stability of the financial system" (Article 4, point 4, NBS Act). It should be kept in mind is that the fulfilment of the goals related to financial stability implies full commitment not only on the part of the central bank but also on the part of other entities whose operations affects financial flows. In this respect, it is extremely important to create an appropriate institutional framework for cooperation and concerted action by all stakeholders. However, it seems that a better solution for the alignment of policies and measures and the timely and efficient exchange of information in this area is the adoption of a special law that would regulate all matters of importance for financial stability. The key questions that would be regulated by this law are related to the establishment of an interinstitutional body in charge of financial stability, defining and implementing of the macroprudential policy.

3. Support to Other Economic Policy Objectives

Monetary and financial stability are fundamental objectives of the central bank. But, also, there are goals that have a major impact on the success of other segments of economic policy. Therefore, a monetary policy conducted by a central bank cannot be viewed as being isolated from the government's economic policy. Taking into account this interdependence, modern monetary legislation seeks to norm not only the responsibility of the central bank for monetary and financial stability but also to envisage

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[4] Article 28, Act on Banks, *Official Gazette RS,* 107/2005, 91/2010 and 14/2015.

its obligation to support the attainment of other economic policy objectives. Thus, according to Article 127 of the Consolidated TEU and TFEU, "The primary objective of the European System of Central Banks (ESCB) is to maintain price stability"; but, "without prejudice to the objective of price stability, the ESCB will support general economic policies in the Community".[5] This support should contribute to achieving the the objectives which, according to Article 3 of the Treaty on European Union encompass sustainable and non-inflationary growth, respecting the environment and high levels of employment and social protection. In a similar way, the NBS Act (Article 3, para. 3) stipulates that the National Bank shall, without jeopardizing monetary and financial stability, support the economic policy of the Government. What is lacking in domestic legislation is the concretization of the economic policy objectives that the NBS supports with its policy. Instead, it is emphasized that support for general economic policy should be in line with the principles of a market economy. The analysis of the norm contained in the aforementioned article of the NBS Act shows that support to the implementation of the economic policy is of conditional nature because the NBS will pursue this goal only if it does not impair the established monetary and financial stability. Likewise, the content of the norm shows that the central bank's hierarchy of objectives is clearly defined, given that it primarily takes care about the stability of prices and the financial system and, only if the above-mentioned condition is fulfilled, supports the objectives of economic policy. The existence of the scale of the central bank priority goals precludes any doubt in the firm commitment of the central bank to preserve price stability. Separating monetary stability as a priority goal suppresses inflationary expectations, which can hinder or jeopardize economic growth and job creation. Therefore, in its operations, the central bank primarily takes into account the achievement of the basic goal, but its role does not end there; as an important subject of economic policy, it can influence the achievement of other economic policy objectives. Of course, this does not mean that the central bank assumes responsibility for the overall economic policy. The accomplishment of other economic policy objectives remains the responsibility of the Government, but this provision seeks to ensure that the central bank carries out delegated functions in coordination with the government, thus creating a favorable environment for economic growth and development.

The capacity of the National Bank of Serbia to influence the achievement of economic policy objectives is determined by the functions entrusted to the central bank by the NBS Art (Article 4); the most important functions for the economic-political role of the central bank are:

a) *the function of regulating cash flows:* By performing this function, the central bank seeks to ensure a sufficient level of liquidity that will, without compromising price stability, create favourable environment for economic activity. Closely related with this function is also the obligation of the National Bank to ensure smooth functioning of payment transactions in the country and abroad.
b) *the function related to regulation of banks' credit activities*: One of the key tasks of the central bank is the impact on the credit activities of banks. The Central Bank has powerful tools that influence the credit potential and credit policy of banks, and consequently the achievement of other economic policy goals. Through the open market operations, i.e. purchases and sales of securities by the central

[5] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, *Official Journal of the European Union*, 2012/C 326/01.

bank, but also by using other instruments, it affects behavior of financial institutions, thus supporting the economic policy of the government. To support the economic policy goals, especially in the conditions of crisis, the function of the "lender of the last resort" is extremely important; it allows this institution to take timely interventions (by granting loans to banks in conditions "when other banks are unable or unwilling to do so") and prevent collapse of the financial system, with all the negative consequences for economic growth and employment (Djukic, 2016: 13).

c) *the control function of the National Bank of Serbia*: The control function of the National Bank of Serbia refers to banks, insurance activities, financial leasing transactions and voluntary pension funds, payment transactions and the protection of the rights and interests of the beneficiaries of services provided by these institutions. The dominant role of the banking sector in the financial system, the strong linkage between the central bank and commercial banks and the appropriate staffing potential are the reasons for entrusting this function to the National Bank of Serbia. In addition, the NBS Act entrusts the National Bank of Serbia with the function of bank restructuring (Article 65a and Article 65b NBS Act); in addition to being important for the stability of the banking system, this function has a significant impact on the overall business environment and, consequently, the accomplishment of other goals of economic policy.

d) *Regulatory role, i.e. the authority of the National Bank to adopt regulations and other general acts.* The regulatory role corresponds to the specific position of the National Bank of Serbia which, as an independent institution, has the authority to adopt certain general acts. In carrying out its functions and policy management, the National Bank has the right to make decisions and take measures in relation to the implementation of these policies. Within this function, the NBS is authorized to provide recommendations and opinions on the legislation in the preparation and regulatory frameworks of the financial system. Yet, it should be kept in mind is that the regulatory power of the NBS is not unlimited, which means that it can be manifested only in the areas under its jurisdiction and directly for the purpose of performing the entrusted tasks.

The establishment of the National Bank's obligation to support the government's economic policy includes the existence of proper cooperation between the central bank and the Government. According to Article 10 of the Law, the NBS cooperates with the Government and other state bodies in the performance of its functions. This cooperation can take different modalities (the presence of the Minister of Finance in the meetings of the Executive Board, i.e. the presence of Governor in the Government sessions, giving opinions on draft laws related to the functions of the central bank, the budget memorandum, economic and fiscal policy, information on the debts of the Republic abroad) with the goal of avoiding the conflict between economic policy objectives when defining the economic policy program, or the phenomenon that the realization of one goal impedes the achievement of another goal. The effectiveness of the economic policy program depends on its consistency, or the consistency of objectives, instruments and measures that it envisages. What should be kept in mind is that this cooperation between the central bank and the government should in no case be the basis for the unallowed influence on the monetary authority, which, as already mentioned, enjoys full autonomy in the exercise of entrusted functions.

CONCLUSIONS

The National Bank of Serbia is an independent public institution that has a very complex and responsible role. The analysis of domestic legislation shows that it enjoys institutional, functional (operational), financial and personal independence. This legal status gives the NBS full freedom in conceiving and implementing monetary policy programs and performing legally entrusted functions. Independent status, however, does not include the freedom to choose the goals that the central bank will implement. In accordance with the ruling monetary paradigm, the freedom of choice of goals is omitted from the concept of independence, since in this way one extremely important leverage of power could be removed from the control of other forms of power and left to the free will of the central banker. Therefore, as in most other countries, the law explicitly determines the goals of the National Bank of Serbia. According to domestic legislation, monetary stability is the main goal of the central bank. Until the outbreak of the financial crisis in 2007, the prevailing view was that the central bank should take into account only one objective - that of the price stability. After the crisis, central banks (and even the NBS) became increasingly aware of the need to reduce systemic risk, which jeopardizes the performance of the key functions of the financial system: informative, allocative, but also the function of risk management and transfer of financial assets, with negative effects on economic growth and employment rate. The fact that financial instability entails high costs, both for economic actors and for the society as a whole, is the reason why central banks are giving increasing importance to strengthening and preserving financial stability. In addition to monetary and financial stability, the National Bank of Serbia is obliged to support the realization of other economic policy objectives through its activities. However, supporting the implementation of economic policy is of a conditional nature, since the NBS is trying to achieve this goal only if it does not impair the established monetary and financial stability. These responsibilities are secondary, given that domestic legislation clearly determines the hierarchy of the central bank's objectives. With the seclusion of monetary stability (and after the global financial crisis - financial stability), as a priority goal of the central bank, any doubt about possible misuse of monetary policy is eliminated, which would not only impair stability, but also negatively affect economic growth.

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CILJEVI NARODNE BANKE SRBIJE

U radu se polazeći od pravnog položaja Narodne banke Srbije analiziraju ciljevi koje domaće zakonodavstvo poverava ovoj instituciji. U skladu sa dominantnom monetarnom paradigmom, osnovni cilj centralne banke Srbije je stabilnost cena. Nakon globalne finansijske krize, u domenu ciljeva, koje centralne banke realizuju, dolazi do promene u smislu da se kao cilj sve češće pominje finansijska stabilnost. To važi i za centralnu banku Srbije koja ima jasan mandat da, pored monetarne stabilnosti, vodi računa i o finansijskoj stabilnosti. Najzad, kao bitan subjekt ekonomske politike, Narodna banka Srbije obavljanjem poverenih funkcija utiče i na ostvarivanje ostalih ciljeva ekonomske politike. Ono što treba imati u vidu to je da domaće zakonodavstvo precizno određuje hijerarhiju ciljeva centralne banke, budući da se izričito propisuje da Narodna banka Srbije prvenstveno brine o monetarnoj i finansijskoj stabilnosti, pa tek onda, i pod uslovom da se time ne ugrožava realizacija osnovnih ciljeva, i o podršci opštoj eknomskoj politici.

Ključne reči: *Narodna banka Srbije, ciljevi, monetarna i finansijska stabilnost, ekonomska politika*.

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CARRIAGE OF GOODS BY SEA AS A SPECIAL FORM OF *LOCATIO-CONDUCTIO OPERIS FACIENDI* IN ROMAN LAW

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Abstract. *Carriage of goods by sea, as a special form of locatio-conductio operis faciendi contract, was particularly interesting in Roman law in the social circumstances related to the period after the Punic wars. It was the period of expasion of the Roman state, characterized by the development of maritime trade, which called for rapid and effective conclusion of contracts in legal affairs. Considering the growth of maritime trade, there was a need to introduce relevant legal instruments which would help meet the increasingly demanding trade of goods. This led to the creation of contract of carriage of goods by sea which was, in Roman law, a specific form of locatio-conductio, specifically locatio-conductio operis faciendi. In order to conclude and ensure the validity of this contract, in addition to the agreement between the contracting parties, it was also necessary to fulfill the conditions regarding the subject matter of the contract. The subject matter of this contract was not work itself or workforce, but the final result of work (opus), i.e. to transport goods from one place to another, and a fee (merces) paid for such services.*

Key words: *maritime trade, carriage of goods by sea, locatio-conductio operis faciendi, opus, merces.*

INTRODUCTION

Carriage of goods by sea, as a special form of *locatio-conductio* contract, is first mentioned in the period after the Punic wars, when the Roman state geographically expanded, alongside with the development of maritime trade. By occupying the surrounding nations, the Romans came in contact with the Oriental culture, which was at a much higher level than the Roman culture. During this period, Rome became a powerful and geographically large state, due to frequent wars and increasingly developing trade (Casson, 1960: 225-233). In this period, Rome was no longer a small monolithic community, spreading out over seven hills (***septimontium***); in fact, it covered the entire Apennine Peninsula (with quite a heterogeneous

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population) (Ignjatović, 2002: 328) and, after defeating the Carthaginians, the whole Mediterranean area (Ignjatović, 2017: 186). In this period, the first provinces were created (Sicily and Sardinia).

The Mediterranean connected the world more than ever. Travelling by sea developed, primarily, because of commercial needs. "Until II century B.C., a large part of transportation was done by land, which was very expensive and connected with many disadvantages; more and more developed trade connections with newly conquered areas, the import of sustainable food and luxury products from distant areas, as well as the transport of passengers and slaves, resulted in the rapid development of maritime transport" (Šarac, 2008: 115). Roman ships travelled across the Mediterranean Sea, the Black Sea and Red Sea, as far as India in the east, along the coast of modern Morocco in the west, and all the way to Britain in the north-west. They mostly travelled in the period from spring to autumn, usually by day. The port of Rome was *Ostia,* at the mouth of the river Tiber, while *Brundisium* (modern Brindisi) was a port from which ships used to set off to Greece and further in the east. The famous ports in Greece were Greek towns Piraeus (in Attica) and Ephesus (in Asia Minor), as well as the islands Delos, Rhodes and Cyprus. The largest Mediterranean port was Alexandria in Egypt, where large cargo ships loaded with wheat started their journey to Rome.

The most significant trade was the one between Rome and provinces. They had to import certain products which were scarce in Rome, and a surplus of some products from Rome and the surrounding area was sold in provinces (Maškin, 1997: 149). Larger towns by the sea developed into big and well-known trade centres, some of which specialized in a particular type of trade.[1] The period after the Punic wars, the suppression of pirates and the use of military roads exclusively for commercial purposes were especially favourable for the general development of trade (Stojčević, 1947: 47). The majority of items were produced for the local population and the local market demand, but there were particular regions of the Empire which specialized in making certain products, for the purchase of which merchants sometimes travelled long distances, occasionally even crossing the borders of the Empire.

Apart from the geographical expansion, the Roman conquests of the neighbouring nations led to contacts with different cultures and different properties. Those circumstances generated a need to create new legal rules which would suit the new situation (Nikčević-Grdinić, 2007: 263), with the purpose of regulating contractual relations and the development of maritime trade (Rouge, 1966:389) with the most distant parts of the Empire.

Although the Romans were famous for their legal ingenuity, legal logic, interpretation of the law and formation and creation of legal rules in accordance with the needs of legal practice (Ignjatović, 2016: 325-338), it is unlikely that they were those who created the laws of maritime trade. It is a fact that they were not known as a maritime nation in history; a long time before them, this trait was attributed to the Hellenic nation whose maritime law was developed in IX century BC (***lex Rhodia de iactu***) (Ignjatović, 2017: 186). Thanks to the reception of the maritime law from the island of Rhodes, the Romans were ready for the development of maritime trade. The presence of these Hellenic foundations in the development of maritime lawoffered an opportunity to the Romans to further develop this field of law, not only through the reception of legal provisions on the

[1]In Pozzuoli, in the Bay of Naples, a huge number of products made of metal and intended for export were produced. On the other hand, after conquering Sicily, the whole province was transformed into a large wheat field which, along with Egypt, was supposed to provide food for millions of people living in Rome and Italy. Ore was imported from Spain, and luxurious items were imported from eastern countries.

common average, about bearing and sharing the risk caused by accidents which could happen during the transport of goods by sea but also through the introduction of new institutes, primarily in the form of maritime loan (***feonus nauticum***), as well as through the creation of new procedural instruments aimed at protecting the interests of users of services of maritime ventures (passengers).

Based on the analysis of relevant legal sources, this paper discusses some issues related to the transport of goods by sea, based on the aforementioned explanations. Thus, the subject matter of analysis of this paper will be the contract of carriage of goods by sea.

1. The Agreement on the Transportation of Goods by Sea as a Special Type of Agreement Locatio-Conductio

As pointed out in the introductory part of the paper, the idea of a special type of agreement ***locatio-conductio***, the agreement on the transportation of goods by sea, is first mentioned in the period of the Roman Republic, when the Roman state started to expand geographically, and especially when maritime trade started to develop. When they occupied the neighboring nations, the Romans came into contact with the oriental culture, which was at a much higher level than the Roman culture. That was a period of "obsession with anything that was Greek" (Stojčević, 1947: 51). However, the base for overall changes in the period of the Republic was not only learning about Greek culture but also the prominent development of trade, which caused a new division in the social structure. A farmer was replaced by a trader (Stojčević, 1947: 51).

The change in the social structure and the contact with Greece had an influence on social awareness and, accordingly, on the change in the perception of the essence of legal relations as well as on the acceptance of new legal rules under pressure of commercial demands. The Romans increasingly abandoned the formalism of the old law, which had been perceived as the basis for legal action, and they placed emphasis on ***consensus***, the consent of will of the contracting partiess, as well as on their preferences when agreeing about a legal transaction (Stojčević, 1947:52).

After defeating the Greek islands, especially Rhodes, the Romans came into contact with the existing rules used to regulate maritime trade.[2] Due to that, the agreement on the transport of goods by sea was defined in accordance with the adopted provisions of the maritime law of the island of Rhodes (Bolanča, Amižić, Pezelj, 2017: 1-11), which was named ***Lex Rhodia de iactu*** (Simonović, 2009:905-915) by the Romans. Therefore, the agreement on carriage of goods by sea, which was given the same name "***Lex Rhodia de iactu*** ("The Rhodian law of jettison"), represents a typical example of what we could call a successful legal transplant; moreover, it was not transplanted through some imposed solution but through a rule which was willingly well implemented by the recipient system (the Roman law) from the donor system (the maritime law of Rhodes) (Đorđević, 2014: 262).

[2] Rhodes was a strong, independent, maritime and trade island, south of modern Greece. In the period between 1000-600 BC, people from Rhodes developed a strong trade fleet, which was the first one on the Mediterranean. It had a further influence on the development of trade fleets along the western coast of Italy, France and Spain. At the same time, the inhabitants of Rhodes developed legal rules which they used to solve numerous problems related to the transportation of goods by sea, including, most probably, the enforcement of the first law in the field of the maritime law, which is called ***Lex Rhodia de iactu*** in modern science. For more, see: Momsen & Kruger, ***Lex Rhodia de iactu***, Digesta XIV, 2; http://www.duhaime.org/lawMuseum/Law article - 383/Lex-Rhodia-The-Ancient-Ancestor-of-Maritime-Law-800-BC.aspx

2. CARRIAGE OF GOODS BY SEA AS A SPECIAL FORM OF LOCATIO-CONDUCTIO OPERIS FACIENDI IN ROMAN LAW (GENERAL CHARACTERISTICS)

In Roman law, the agreement on transportation of goods by sea was a specific form of the agreement ***locatio-conductio***, more precisely ***locatio-conductio operis faciendi***; thus, all rules which were applied to this agreement were also applied to its specific form (subtype), to the agreement on the transportation of goods by sea.

The agreement on the transportation of goods by sea, as a specific form of ***locatio-conductio operis faciendi***, represented a consensual ***bona fides*** agreement, binding on both contracting parties, defined during the period of the Roman Republic and protected by ***action conducti*** and ***action locati***. Under this contract, one party (***conductor***) made a commitment to perform a certain activity within a specified time, and the other party (***locator***) was obliged to pay a particular amount of money in return (Đorđević, 2014:251).

2.1. Subject of the contract

The subject of this agreement was not the commissioned work or workforce but the final result of work (***opus***), i.e. transportation of goods from one place to another, as well as a payment (***merces***) which was made for the service. In order for this agreement to be concluded and made valid, beside the consent of wills of the contracting parties, it was necessary to fulfil conditions regarding the delivery of goods for the commissioned work. All loaded goods had to be written down in the logbook and a detailed inventory was made "***in scriptis***". A document, which included a complete inventory of the goods, was not available to traders. That primitive form of a bill of lading had to include the name of the property owner, a list of goods, labels, weight and the amount.

2.2. Contracting parties

The agreement was made between the owner of property and the captain of a ship, who was, as a rule in the ancient times, the owner of the ship (***dominus navis***) (Pezelj, 2017: 311-335); therefore, he was in charge of the ship and he also collected payments for provided services. This was quite understandable, especially considering maritime situation of that era. Insufficiently developed maritime trade necessarily imposed the need for the ship owner to command the ship and to be largely responsible for its maintenance (Šarac, 2008:85).

However, the validity of an agreement could depend on a third party, which happened somewhat later, after the Punic wars, when new opportunities for the financial and economic growth of the Roman state emerged. With the increase in material wealth and the transition to a market economy, it was necessary to divide the work between the owner of the ship (which had its post in the domestic port) and the ship commander who sailed for the owner (Šarac, 2008:85). Thus, in addition to ***executor navis,*** a third person could command a ship if the ship owner authorized him as his representative (***magister navis,*** usually a slave or a person *alieni iuris*), who deputized the ship owner and, technically, managed the ship (Ignjatović, 2017: 190). ***Exercitor navis*** was a ship owner, or a shipper, i.e. the party which organized the navigation venture and gained all advantages or sustained all damage resulting from giving a ship, while ***magister navis*** was the captain of a ship (Šarac, 2008:115).

However, it was not easy to arrange the division of labor between the ship owner and the ship captain because the basic principles of Roman law made it difficult, or even

impossible, to enter into a legal contract with subordinate persons or in cases when ***persona extranea*** was the ship captain, due to their inadequate payment capacity. On the other hand, it was necessary to protect the interests of third parties that concluded certain legal affairs and thus increase the level of mutual trust and security. This was accomplished in the II century B.C. by the intervention of the ***praetor***, who introduced a special means of legal protection: ***actio exercitoria.*** Through this institute, the responsibility of the ship owner was established, i.e. the responsibility of the person who appointed a slave, a son or ***persona extranea*** to act as the captain of the ship (***magister navis***) for obligations arising from the affairs of those persons who were responsible for the transport of goods by sea and ship management (Šarac, 2008:86).

2.3. Rights and obligations

Considering the double-binding character of this contract, both the locator and the conductor were bound by rights and obligations arising from the contract. The obligation of embarkation of goods was directly related to the ***locator*** (the one who ordered the service) and it was a necessary presupposition for this type of ***locatio-conductio operis faciendi***. Besides, due to the nature of this agreement, the term "goods" referred to all movables, both consumables and non-consumables. In case of transporting movable and non-consumable goods, as a rule, the ***conductor*** had custody of the property. However, in case of movable and consumable goods (such as wine or wheat), the ***conductor*** would become the owner of the property at the moment of taking it, thus assuming an obligation to give back the same amount of the same type of property after finishing transportation. Another obligation of the l***ocator*** was to pay the price for the transportation of goods. As a rule, the price was expressed in money but it was possible to make other arangements (Stanojević, 2009:249). Finally, the ***locator*** was obliged to organize not only embarking but also disembarking of goods, after the ship safely reached the port. For the protection of his rights, the ***locator*** could rely on ***action locati***. In case of theft or damage of goods during the transportation by sea, he could use ***action furti et damni adversus nautas*** and the general ***actio in factum*** (Pezelj, 2017:318).

Transported goods usually belonged to a number of different owners, and only in rare cases did they belong to a single owner. As the transported goods were owned by a number of creditors (*locators* who ordered the service), the owners sustained unequal damage in case of jettison (accidents, pirate attacks, storms, etc.). Thus, a question arose whether it was in accordance with the main idea of law that, in circumstances when the goods of one owner were sacrificed for the common benefit of other owners, the victim should be the only one responsible for the loss. The solution for this situation could be found in ***Lex Rhodia de iactu***, which provided that in case of common average all creditors (*locators*), as well as the ship owner (*conductor*), should share any losses *in solidum* in proportion to the value of the saved goods.

Paul. D. 14, 2, 1. *LEGE RHODIA CAVETUR, UT SI LEVANDAE NAVIS GRATIA IACTUS MERCIUM FACTUS EST, OMNIUM CONTRIBUTIONE SARCIATUR QUOD PRO OMNIBUS DATUM EST* (Boras, Margetić, 1980:166).

The obligation of a ***conductor*** was to complete the commissioned work (transportation of goods by sea). Therefore, the subject of his obligation (***opus***) was a result of his work – provided transportation of goods by sea. This was necessarily related to the price, which he

was permitted to accept only after completing the entrusted task. Besides, his liability was to provide safe transportation of goods, and to handle the entrusted goods with utmost care, like ***bonus pater familias***. That is why his liability was not ***omnis culpa*** but, in certain cases, he was also responsible for the competence of his crew members and his assistants, and in some other cases, for ***custodia*** as well. This type of responsibility additionally aggravated the position of conductors, since their responsibility had already been increased, and in the age of the Republic it was marked as objective responsibility (***culpa in custodiendo***). The introduction of this aspect of responsibility was necessary because it was the foundation for the relation of trust between the provider and the user of a service. On the other hand, the absence of this aspect of responsibility led to the general state of unsafety; thus, ship owners had a bed reputation for a while because it was believed that they often organized cooperation with thieves, with the aim of gaining unlawful property gain (Bujuklić, 2013:432).

2.5. Procedural means of protection

On the other hand, the rapid development of trade necessitated quick and efficient conclusion of contracts in legal affairs. Yet, there were situations where the ship owner did not have time to inquire in detail about the qualities and personal characteristics of the ship captain, due to the difficult weather and local conditions (Šarac, Miletić, 2017: 423). For this reason, in accordance with the principle of equity, the ***praetor*** introduced a lawsuit against the conductor in cases when the ship owner or ship captain acted on his behalf. This rule on ***actio exercitoria*** and ***actio institoria*** is written in *Gaius Institutiones* (Book 4, paragraph 71).

Gai, IV, 71: EADEM RATIONE CONPARAVIT DUAS ALIAS ACTIONES, EXERCITORIAM ET INSISTORIAM. TUNC AUTEM EXERCITORIA LOCUM HABET, CUM PATER DOMINUSVE FILIUM SERVUMVE MAGISTRUM NAVI PRAEPOSUERIT, ET QUID CUM EO EIUS REI GRATIA CUI PRAEPOSITUS FUERIT GESTUM ERIT. CUM ENIM EA QUOQUE RES EX VOLUNTATE PATRIS DOMINIVE CONTRAHI VIDEATUR, AEQUISSIMUM ESSE VISUM EST IN SOLIDUM ACTIONEM IN EUM DARI. QUIN ETIAM, LICET EXTRANEUM QUISQUE MAGISTRUM NAVI PRAEPOSUERIT SIVE LIBERUM, TAMEN EA PRAETORIA ACTIO IN EUM REDDITUR. IDEO AUTEM EXERCITORIA ACTIO APPELLATUR, QUIA EXERCITOR VOCATUR IS, AD QUEM COTTIDIANUS NAVIS QUAESTUS PERVENIT.

Therefore, a locator had the right to file a lawsuit against the ship owner in all those situations where the ship captain caused damage to the locator in the performance of his duties. As the basis of responsibility was the will of the ship owner (***voluntas***), the ship owner was fully accountable (***in solidum***) (Šarac *et al.,* 2017: 424). This was also the case when the ship owner authorized a slave or a third person, who was not his ***alieni iuris***, to be the captain (Šarac *et al.*, 2017:424). If the captain was a person ***alieni iuris***, then the ship owner was fully accountable for the work he entrusted to this person, as well as for the work he subsequently approved. Otherwise, he was accountable only for the value of the property of a person ***alien iuris*** (***in peculium***).

According to Ulpian, the responsibility of the ship owner was ***in solidum*** because it was based on ***sua voluntate***. As such, it was permanent. This further meant that his responsibility could be inherited, and the claim could have been raised by third parties

after his death, even against his successors. The responsibility of the ship owner did not cease even in the event of a death of the ship captain or the change in his status due to the ***captitis deminutio*** (Šarac et al., 2017:426).

D.14.1.4.3 (Ulp. 29 ad ed): SI SERVUS SIT, QUI NAVEM EXERCUIT VOLUNTATE DOMINI, ET ALIENATUS FUERIT, NIHILO MINUS IS QUI EUM ALIENAVIT TENEBITUR. PROINDE ET SI DECESSERIT SERVUS, TENEBITUR: NAM ET MAGISTRO DEFUNCTO TENEBITUR.

Starting from the interests of third parties and the need for their protection, the ***praetor*** therefore found that the ship owner could always be suid under the ***actio exercitoria***. However, if the ship captain caused damage to the locator, by performing a job against the will of the ship owner, in that case he was personally accountable to the locator based on the ***locatio-conductio*** if he received some compensation for that job, or if it was not the case, then on the basis of the ***mandatum*** contract. It was considered that the ship captain was obliged to conclude only those jobs for which he received the order from the ship owner (Šarac *et al.,* 2017: 427). Also, the ship owner could designate more persons for the captain of the ship, and in that case, he was responsible for all the obligations that they would have assumed within the activity for which they received an order from the ship owner.

CONCLUSION

In Roman law, carriage of goods by sea, as a special form of ***locatio-conductio operis faciendi*** contract, was becoming particularly interesting in the social circumstances after the Punic wars. By occupying the surrounding nations, the Romans came in contact with the Oriental culture, which was at a much higher level than the Roman culture. The Mediterranean connected the world more than ever. Travelling by sea developed, primarily, for commercial needs. Until II century B.C, a large part of transportation was done by land, which was very expensive and connected with many disadvantages, such as: interception by robbers, weather conditions, etc.). The development of trade connections with newly conquered areas, the import of sustainable food and luxury products from distant areas, as well as the transport of passengers and slaves, resulted in the rapid development of maritime transport. With flourishing of maritime trade, there was a need to introduce legal rules which would be used to deal with numerous problems that emerged during its development.

After the conquest of the island of Rhodes, the Romans resorted to the reception of already existing provisions on maritime law, which was of great help in the process of developing legal rules on this subject matter. Thanks to these provisions, as well as the activities of the ***praetor***, who introduced practical solutions in order to resolve many problems encountered in practice and thus contributed to the development of maritime trade, there was an increasing emphasis on the consensus of the contracting parties. For this reason, the contract on the transport of goods by sea was included in a group of consensual contracts. Thus, this contract was referred to as a special form of ***locatio-conductio*** contract. As a specific form of ***locatio-conductio operis faciendi***, it was a consensual, double-binding, cargo, ***bona fides*** contract, as defined in the era of the Roman Republic, and protected by ***actio conducti*** and ***actio locati***.

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PREVOZ ROBE MOREM KAO POSEBNA VRSTA *LOCATIO-CONDUCTIO OPERIS FACIENDI* U RIMSKOM PRAVU

Prevoz robe morem, kao poseban oblik ugovora locatio-conductio operis faciendi, postaje posebno zanimljiv u društvenim oklonostima u periodu nakon punskih ratova, kada je došlo do geografskog širenja rimske države, a posebno do razvoja pomorske trgovine, koja je nužno zahtevala brzo i efikasno zaključivanje pravnih poslova. Sa procvatom pomorske trgovine, javila se potreba i za postojanjem pravnih instrumenata, uz pomoć koje bi se izlazilo u susret sve zahtevnijem prometu robe. Tako je došlo do nastanka ugovora o prevozu robe morem, kao posebnog oblika ugovora locatio-conductio. Ugovor o prevozu robe morem u rimskom pravu, bio je jedan specifičan oblik ugovora locatio-conductio, tačnije locatio-conductio operis faciendi, pa su shodno tome, sva pravila koja su se primenjivala na ovaj ugovor, primenjivala i na njegov specifičan oblik (podvrstu), na ugovor o pomorskom prevozu robe. Za nastanak i punovažnost ovog ugovora, pored postignute saglasnosti volja ugovornih strana, bilo je neophodno i da budu ispunjeni uslovi u pogledu predmeta ugovora. Predmet ovog ugovora bio je specifičan, pa nije bio sam rad ili radna snaga, već konačni rezultat rada (opus), tj. da se preveze roba sa jednog mesta na drugo, i naknada (merces), koja se za takvu uslugu plaćala.

Ključne reči: *pomorska trgovina, prevoz robe morem, locatio-conductio operis faciendi, opus, merces.*

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SPECIAL MEASURES FOR PREVENTING THE COMMISSION OF SEX CRIMES AGAINST MINORS: THE EXAMPLE OF SERBIA[*]

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Abstract. *The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007) was ratified and thus incorporated into the Serbian legal system in 2010, which entailed the obligation to regulate this matter in greater detail by introducing specific measures aimed at preventing this type of criminal activity. This aim was accomplished by adopting the Act on Special Measures for Preventing the Commission of Sex Crimes against Minors (2013). This paper explores the aforementioned special measures for preventing sexual abuse of children, with particular reference to some controversial and disputable issues.*

Key words: *sexual offences, minors, special measures for preventing sex crimes against minors.*

1. INTRODUCTORY REMARKS

The results of recent studies in the area of sex crimes against minors are rather alarming, stating that one out of five children in Europe is affected by some kind of sexual violence/abuse.[1] The national studies also demonstrate a disturbing fact that this type of criminal activity is fairly common and widespread in Serbia, which may be

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[*] The paper discusses the results of the research study conducted within the project "Harmonization of the Serbian legislation with the EU law", financially supported by the Faculty of Law, University of Niš, in the period from 2013 to 2018. This paper was presented at International conference "Contemporary challenges to the criminal legislation" (on the occasion of the 50th anniversary of the Bulgarian Criminal code from 1968), held on 8-9th May at Sofia university "St. Kliment Ohridski", Sofia, Bulgaria.
[1] This fact is the result of various studies conducted in many EU countries, UNICEF and World Health Organization statistical data. More information is available in the documents pertaining to the Council of Europe campaign *One in Five: The Council of Europe Campaign to Stop Sexual Violence Against Children*, accessible at http://www.coe.int/t/DG3/children/1in5/default_en.asp, accessed on April 8th, 2018.

illustrated by the fact that as many as 68% of child-victims of human trafficking in Serbia have been primarily aimed at sexual exploitation, whereas one out of three young girls has been exposed to some kind of sexual abuse before the age of eighteen.[2] The frequency of this phenomenon, its evolution and development of new models due to the abuse of information technologies, transnational presence and detrimental effects on children's health and their psycho-social development are the reasons why the Council of Europe adopted the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse in 2007 (hereinafter: the Convention).[3] The Convention was ratified and thus incorporated into the Serbian legal system,[4] which entailed the obligation to revise the national legal framework and introduce various measures envisaged in the Convention. This was accomplished by adopting the Act on Special Measures for Preventing the Commission of Sex Crimes against Minors (hereinafter: the Special Measures Act).[5] This Act is to be regarded not only as a response to the accepted international obligations but also within the framework of a broader social action outlined in the National Strategy for the Prevention and Protection of Children against Violence (2008).[6]

For the purpose of preventing and counteracting sex crimes against minors, the Special Measures Act envisaged a very complex mechanism comprising several legal instruments, such as: prohibition of mitigating the imposed punishment, prohibition of release on parole, preclusion on the statute of limitations on criminal prosecution and execution of punishment (Article 5); legal consequences of the conviction (Article 6); special measures (Articles 7 – 12); and keeping criminal records on the convicted sex offenders (Articles 13 – 15). In foreign theory, these measures are known as *post-incarceration sanctions,* and their introduction was based on the assessment that the existing criminal sanctions for such offences were not effective enough, so that the post-penal treatment of a perpetrator (in the broadest sense) emerged as a very significant factor in the fight against criminal recidivism (Wright, 2008: 17). Generally speaking, regardless of their potential heterogeneity, the measures taken after the release of the convicted offender always have a common goal: to control, supervise and provide assistance to the offenders, and thus reduce the risk of recidivism, reoffending by committing the same or similar criminal act for which they have already been convicted. As the Convention does not propose any particular guidelines considering the aforementioned preventive measures, the national legislator was free to devise and develop this system in line with the observed needs. Thus, the Serbian legislator enacted the following preventive measures: the obligation of the convicted sex offenders to periodically report to the competent police authority and the Directorate for the Execution of Criminal Sanctions; the ban on visiting places where minors commonly gather for educational, recreational or social purposes; mandatory counseling in professional counseling centers and institutions; mandatory notification of any change concerning the place of residence, habitual stay or

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[2] The results of national studies are based on the discussions by Petković, N., Đorđević, M., Balos, Đ., in *Analiza stavova javnosti u Srbiji prema fenomenu seksualne zloupotrebe dece.* Temida, 2010, no. 4, p. 63.

[3] *Council of Europe Convention of the Protection of Children against Sexual Exploitation and Sexual Abuse*, the Lanzarote Convention *(CETS 201), https://rm.coe.int/1680084822,* accessed on April 8th, 2018. Having been ratified by the required number of states, it came into effect in July 2010.

[4] The Act on the Ratification of the Convention of the Protection of Children against Sexual Exploitation and Sexual Abuse, *Official Gazette of the RS – International agreements, no. 1/10.*

[5] The Act on Special Measures for Preventing the Commission of Sex Crimes against Minors, *Official Gazette of the RS, no. 32/13.*

[6] The National Strategy for the Prevention and Protection of Children against Violence, *Official Gazette of the RS, no. 122/08.*

workplace, as well as mandatory notification about a trip abroad. These special measures remain effective for twenty years after the offender has served the imposed sentence; however, in four-year intervals, the trial court that rendered the first-instance decision is obliged to decide *ex officio* upon the need for further application of these special measures. Moreover, in two-year intervals from the awarded application date, convicted offenders are allowed to request a revision and reassessment of the further application of these measures by submitting a request to the trial court. Any form of non-compliance with the imposed measures constitutes a misdemeanour offence, which is punishable by a term of 30 to 60 days' imprisonment (Article 16 of the Special Measures Act).

Other issues related to special measures are regulated by the Act on the Execution of Non-custodial Criminal Sanctions and Measures (hereinafter: the Execution Act)[7] and the Rules on the process of executing non-custodial sanctions/measures, and the organization and activities of the supervision officer (hereinafter: the Rules on the Execution Process).[8] However, only several articles in the aforementioned acts refer to the execution of special measures. Therefore, the offenders are obliged by law to report personally to a designated supervision officer within the period of three days from the date of the imposed criminal sanction (Article 58 of the Execution Act). The supervision officer's activities are regulated in Articles 59 and 60. First, within the period of three days from the offender's report date, supervision officers must initiate preparatory actions for the execution of special measures and establish cooperation with the police and the professional counseling and treatment institutions which are important for the proper execution of these measures. After that, within the period of eight days from the offender's report date, supervision officers are required to draw up a plan for the execution of special measures, to make the offender aware of the plan and the consequences of non-compliance, and to deliver the plan to the trial court which rendered the first-instance decision, the police and professional counseling service and institutions participating in its execution. Upon the trial court request, supervision officers are also requested to submit a report on the implementation of the execution plan, as well as to inform the competent court within a period of three days about the offender's non-compliance with the special measures. The articles envisaged in the Execution Act are unnecessarily reiterated in the Rules on the Execution Process, which introduces only a small number of specific provisions on the method of implementing the execution plan (Article 36 of the Rules). These provisions include the supervision officers' obligation to assist the offenders through educational and counseling activities so as to make them realize the gravity of their crimes but also to cooperate with members of their families, if necessary. Besides, the parole officer is obliged to inform the court about potential obstacles to the execution of the plan, such as illness of the offender that requires longer treatment or other extraordinary circumstances, which are not explicitly specified in the Execution Act.

2. Brief Analysis of the Legal Nature of the Special Measures Applicable to the Perpetrators of Sex Crimes Against Minors

These special measures have given rise to numerous dilemmas ever since they were first introduced into our legal system. One of the key disputable issues has always been

[7] *Official Gazette of the RS, no. 55/14.*
[8] *Official Gazette of the RS, no. 30/15.*

the question of their legal nature. Their prominent feature is special prevention, which directly relates them to some other criminal law institutes, particularly to safety measures, which are generally aimed at eliminating the circumstances and conditions that may induce the commission of future criminal offences.[9] Conditions commonly imply objective factors involved in the commission of crime, whereas the perpetrator's mental state and personal circumstances are subjective factors which, in conjunction with objective factors, lead to the commission of illicit criminal activities. Despite being functionally similar, the basic difference between special measures and safety measures lies in the fact that the latter are ordered by the court, just as all other criminal sanctions, which is not the case with special measures.

Certain similarities are evident when special measures are compared to the legal consequences of conviction, which ensue by the force of law in cases involving specific criminal offences or punishments, and which imply either the cessation or forfeiture of particular rights, or prohibition of acquiring particular rights (Article 94 of the CC). A very simple argument may be used against the endeavours to classify special measures into the category of legal consequences of conviction: namely, the Special Measures Act envisages the legal consequences of conviction as an independent institute.[10] Therefore, it is not logical to regulate legal consequences of conviction in two different ways within the same legal text: first, by explicitly designating them as such and, second, by concealing them under the term special measures.

Moreover, special measures may also be considered in relation to the obligations pertaining to the framework of protective supervision in cases involving suspended sentences. The protective supervision includes the following obligations: the offender's duty to report to a competent authority in charge of enforcement of protective supervision within periods set by such authority; providing professional training to the offender for a particular profession; the offender's duty to accept employment consistent with his abilities; the obligation to support the family, provide for child care and upbringing, and fulfill other family duties; the duty to refrain from visiting particular places, establishments or events which may provide an opportunity or incentive for re-offending; timely notification of the change of place of residence, address or working place; the duty to refrain from drug and alcohol abuse; treatment in a competent medical institution; visiting particular professional and other counselling centres or institutions and adhering to their instructions; eliminating or mitigating the damage caused by committing the offence, particularly reconciliation with the victim of the criminal offence (Article 73 of the CC).

The aforementioned obligations enable the authorities to provide relevant support and assistance to the person who has been awarded a suspended sentence but they also ensure relevant supervision aimed at preventing recidivism (Stojanović, 2017: 324, Lazarević, 2011: 316, Jovašević, 2016: 283), which makes them similar to special measures. It may be concluded, without much mental strive, that the protective supervision obligations and certain special measures are essentially the same in terms of content. For instance, there are striking similarities between the offender's duty to report to a competent authority in charge of enforcement of protective supervision within periods set by the authority and

[9] Article 78 of the Criminal Code of Serbia (hereinafter: the CC), *Official Gazette of the RS, no. 85/05, 88/05 – corr., 107/05 – corr., 72/09, 111/09, 121/12, 104/13, 108/14 u 94/16.*

[10] These involve the following: termination of any public function; termination of employment or any kind of job related to work with minors; prohibition of holding any public positions; and prohibition of finding employment in any area related to work with minors.

the obligation of the convicted sex offenders to periodically report to the competent police authority and the Directorate for the Execution of Criminal Sanctions; the offender's duty to refrain from visiting particular places, establishments or events that may provide an opportunity or incentive for re-offending is quite similar to the ban pertaining to sex offenders on visiting places where minors commonly gather for educational, recreational or social purposes; etc.[11] It may be noted that the language in designating special measures is slightly more stringent, given the fact that the legislator explicitly underscores their mandatory nature; on the other hand, while the obligations stemming from protective supervision measures have not been explicitly designated as "mandatory", which does not imply that the offender is not obliged to perform the imposed obligations. This overlapping might be understood as an attempt to relate new provisions to those that have already been recognized and traditionally practised in our legal system, and thus avoid the criticism against an exaggerated experimentation in the treatment of sex offenders, but also to facilitate the execution of these measures by taking advantage of the experience gained from protective supervision. However, regardless of contextual similarities, it must be argued that protective supervision measures are ordered by the court of law in the form of a judicial decision. Therefore, the only viable response to the posed question concerning the legal nature of special measures may be found in designating them as measures *sui generis.*

3. Some Remarks on the Scope of Application of These Special Measures

In principle, when determining the scope of application of these special measures, there is a dilemma whether they shall be applied against all sex offenders or to exclude the perpetrators of minor crimes. The Serbian legislation prescribes these special measures only for adults who commit the following offenses: rape (Article 178, par. 3 and 4 CC), sexual intercourse with a helpless person (Article 179, par. 2 and 3 CC), sexual intercourse with a child (Article 180 CC), sexual intercourse through abuse of position (Article 181 CC), prohibited sexual acts (Article 182 CC), pimping and procuring (Article 183 CC), inducement to prostitution (Article 184, par. 2 CC), showing, procuring and possession of pornographic materials and abuse of minors for pornography (Article 185 CC), inducing a minor to be present during sexual intercourse (Article 185a CC), and abuse of computer networks or other means of electronic communication with an intent to commit criminal offenses against sexual freedom of minors (Article 185b CC). Envisaged exclusively for the purpose of protecting minors from sexual abuse, the enlisted offenses are classified as sex crimes against minors or qualified forms of general criminal acts involving a minor or a child.[12]

Yet, it has to be noted that this list does not include certain offenses, such as: cohabitation with a minor (Article 190 CC), incest (Article 197 CC) and human trafficking (Article 388 CC). Formally, they do not belong to the group of sexual offenses because they are classified as offenses against marriage and family, or offences against humanity and other rights

[11] Considering that almost each special measure corresponds to some obligation within the protective supervision framework, we may reasonably raise the question concerning the appropriacy of the term which emphasizes their "special" nature.

[12] Serbian legal system states that a minor is an individual of fourteen years of age, but not of eighteen, whereas a child is an individual younger than fourteen years of age (Article 112, par. 8 and 9 CC).

protected by international law. Cohabitation with a minor becomes a criminal activity if an adult cohabitates with a minor, or if a parent, adoptive parent or guardian enable or induce a minor to cohabitate with another person. The qualified form of this offence exists if the act is motivated by financial gain. The incrimination of cohabitation with a minor provides for legal protection of minors, who are considered to be neither physically nor mentally mature enough to live in such a community, which will only impede their further development, education, etc (Stojanović, 2017: 607). However, besides living together, cohabitation also presupposes sexual relations, which may sometimes entail the likelihood of sexual abuse and exploitation of a minor. Whereas it may be unjustified to claim that every cohabitation with a minor is arranged for this purpose, there is no dispute that such forms of cohabitation do exist. The general definition of cohabitation with a minor and various forms of this criminal offence seem to be the main reason why it has not been included in the aforementioned list. An *a priori* application of envisaged measures would certainly lead to fairly unjust outcomes considering that they would affect even younger adults living in an extramarital community with older minors, devoid of any ulterior motives but formed with the purpose of either getting married or starting a family, which is quite a common practice among members of some minority groups.

Incest is committed by an adult who engages in sexual intercourse or an act of equal magnitude with an underage relatives of lineal consanguinity or an underage sibling. The sexual abuse is indisputable in all incest cases, notwithstanding the fact that the seriousness of this act is somewhat "diminished" by classifying this offense into the group of offenses against marriage and family. Whereas there may be reasonable grounds for exempting the adult cohabitating with a minor from the application of these special measures, there is hardly any justification for exempting the perpetrators of incest. The incestuous offender who sexually abused a minor relative or next of kin shall not enjoy a more favourable status than other sexual offenders against minors; this argument may be further supported by the fact that some of the sexual offenses that are subjected to the application of special measures are less serious than incest, which is punishable by a term of imprisonment ranging from six months to five years. For example, the prescribed punishment for the basic form of illicit sexual acts is either a fine or a term of imprisonment for up to three years, whereas the criminal act of abusing computer networks or other means of electronic communication with an intent to commit offenses against sexual freedom of minors is punishable by a fine or a term of imprisonment for up to six months (Article 185b, par.1 CC), or a term of imprisonment ranging from three months to three years (Article 185b, par. 4 CC). The argument for including incest into the group of offences which should be subjected to the application of special measures_may be further supported by the fact that incest is one of the most traumatic experiences that has permanent, lifelong effects on the victim.[13]

When the criminal offence of human trafficking is committed against a minor, it is essential to discern all qualified forms that affect minors as victims (Article 388 paragraphs 2-7 CC), provided that the criminal offence was committed for the purpose of engaging minors in prostitution, sexual exploitation or pornography. The special measures should also apply in case the perpetrator knows or might have known that a minor is a victim of human trafficking and abuses the minor's position or facilitates the minor's abuse by another for the purpose of prostitution, sexual exploitation or

[13] For more on the traumatic effects of incest, see: Mršević, Z. *Incest između mita i stvarnosti.* Institut za kriminološka i sociološka istraživanja i Jugoslovenski centar za prava deteta. Beograd, 1997.

pornography (Article 388, par. 9 CC). If the legislator had intended to provide more substantial protection of minors, human trafficking should have been classified as one of the sex crimes, particularly given the fact that the majority of underage victims of human trafficking are primarily intended for sexual exploitation.

4. Discussion of the Contents of Special Measures, their Potential Special Prevention Effects and their Criminal Policy Justification

The first special measure on the provided list is the obligation of the convicted sex offenders to periodically report to the competent police authority and the Directorate for the Execution of Criminal Sanctions. Within the first 15 days every month, the offender is required to personally report to the police station in the place of residence and to the organizational unit of the Directorate for the Execution of Criminal Sanctions, which is responsible for the correctional treatment and alternative sanctions. A disputable issue arising from measure is the fact that the same reporting regime equally applies to all offenders, without a possibility of being adjusted to specific offenders, irrespective of the gravity of the committed crime or whether they are first-time offenders or re-offenders; generally speaking, the same regime applies to a wide range of perpetrators who differ in terms of the risk of re-offending, which certainly cannot be justified. Moreover, such monolithic use of this special measure is inconsistent with some of the basic criminal law principles: the principles of proportionality and fairness, which should be taken into account in the course of introducing prospective amendments to the Special Measures Act.[14]

The ban on visiting places where minors commonly gather for educational, recreational or social purposes means that offenders are not allowed to visit institutions such as school buildings, school yards, kindergartens, playgrounds, children's festivals and performances, etc. This measure is a based upon the theory of routine activities, which presupposes that criminal activities result from the coordination of several factors: a motivated perpetrator, the encounter with a victim, and the absence of the "guardian" who can provide adequate protection (Cohen, Felson, 1979: 588-608). In crime control, this can be realized by eliminating the motivated offender from the places frequented by prospective victims, by forming the so-called hot spots, i.e. the places generally frequented by a large number of minors, and occasionally the so-called buffer zones, which are additional protective belts around the hot spots. The basic disadvantage of this measure is the lack of rules on the way of executing this measure and its supervision. The Special Measures Act, the Execution Act, and the Rules on Execution Process contain no single provision on this matter. In the comparative law, the compliance with the prohibition of visiting particular places is monitored by the use of the *GPS* system (Maloy, Coleman, 2009: 245, Shekhter, 2010: 1086-1087, Wright, 2008: 36). However, this solution has been the subject matter of considerable dispute, ultimately leading to the judicial review on the constitutionality of

[14] The graded application of this measure can be illustrated by several examples from the comparative law. In Macedonia, the offenders are required to report to the court in their place of residence at least once a year, five days prior to their birthday, until the end of their lives; see Article 7 of the Act on the Special Register of Sexual Offenders convicted of sexual abuse of minors and pedophilia, *Official Gazette of the Republic of Macedonia, no. 11/12 u 112/14.* In the USA, the offenders must report to the police in person once a year, once in six months or once in three months, depending on the specific category of sex offenders (who are classified into three tiers); see Section 116 of *Adam Walsh Act* (2006) at http://www.justice.gov/olp/pdf/adam_walsh_act.pdf; assessed on April 8th, 2018.

using the *GPS* system for tracking sex offenders (Shekhter, 2010: 1091-1094); the results of some empirical studies have contributed to raising doubt in the efficiency of this form of supervision of sex offenders (Finn, Muirhead-Steves, 2002: 305-307, Maloy, Coleman, 2009: 247). The problem in our country is definitely the lack of technical equipment in the supervising services as well as the cost of applying this type of supervision.

In addition, the ban on visiting places where minors commonly gather is based on the hypothesis that the sex offender is the so-called "dangerous stranger" who lurks in places where minors frequently gather in great numbers. Yet, research on the phenomenology of this kind of criminal offenses in Serbia offers quite a different view. According to a study conducted in Serbia from 1994 to 1998, the victims knew the sex offenders in 98.2% of all cases. This result was confirmed in another study conducted in the period from 2004 to 2009, but the percentage was even higher, given the fact that all the victims had already known their offenders (Petković, Đordjević, Balos, 2010: 312). When correlated with the obtained results, there is a dilemma whether this measure can contribute to achieving the desired preventive effect, particularly considering that it was created for a completely different type of offender as compared to the statistically most prominent type of sex offenders in Serbia, which often includes family members, friends, relatives, neighbors, and other individuals known to the victims.

Mandatory counseling in professional counseling centers and institutions implies that the offenders are required to comply with this measure and get professional assistance in accordance with the plan determined by the organizational unit of the Directorate for the Execution of Criminal Sanctions, which is in charge of the offenders' treatment and alternative sanctions. Unlike other measures, which are mainly aimed at supervision and control, this special measure reflects a propensity to help the offender. It may contribute to changing the offender's attitudes towards the committed crime, raising awareness about the socially unacceptable forms of behaviour, and developing empathy towards the victims. This form of intervention may also have some effect on the control of the aggressive and impulsive behavior, for example, through cognitive-behavioral therapy. The greatest drawback are the poor technical capacities for the application of this measure. Namely, there are no provisions on the institutions that are to implement this measure. The situation in Serbia is further aggravated by the fact that there is an evident lack of highly qualified experts, well-trained and experienced staff, and special standardized programmes for the treatment of sex offenders. This is actually part of a much broader problem related to the procedure on the execution of prison sentences. In Serbia, various programmes are developed and applied to drug addicts or perpetrators of violent but non-sexual crimes; for the aforesaid reasons,[15] such programs are not applied in the institutional treatment of sex offenders.

Mandatory notification of any change concerning the place of residence, habitual stay or workplace means that the offenders are required to personally inform the competent organizational unit of the police and the organizational unit of the Directorate for the Execution of Criminal Sanctions, which is responsible for the offender's treatment and alternative sanctions, within the period of three days from the change date. There is a similar measure in the comparative law, but it is particularly interesting that some legislations include different consequences of non-compliance with this measure. In the

[15] More in: Radojković, Z., Petković, N., *Potrebe i mogućnosti tretmana učinilaca krivičnih dela protiv polnih sloboda* – Belgrade School of Defectology, 2017, vol. 23, no. 2, p. 74-76.

Serbian legal system, the failure to observe the imposed measure is regarded as a misdemeanour, and punished accordingly. In some legal systems, if the periodic supervision proves that the offender cannot be located at the registered address, the police is allowed to put the offender on the wanted list and enter his names into the wanted persons database.[16] This mechanism seems to offer a more efficient control and protection, and it is a very significant deterrent to crime.

Mandatory notification of the trip abroad means that the offender is required to report in person to the designated organizational unit of the police at least three days prior to the journey. The information should contain the name of the country of travel, the place and length of stay abroad. This obligation is present in many comparative legal systems but the offender may be required to provide much more detailed information on the trip.[17] The additional aim of this measure is to establish international cooperation in the area of counteracting sex crimes which is impossible to accomplish without the exchange of relevant data about sex offenders. The introduction of this measure might have been the result of the conclusion that the *modus operandi* of some offenders entails a trip abroad for the purpose of committing a crime and the emergence of the new phenomenon of sex tourism, where pedophiles visit destinations renowned for child prostitution.[18] As for the application of this special measure, it has to be noted that the aforementioned *modus operandi* is not a typical feature and common practice of sex offenders in Serbia.

5. Concluding Remarks

The introduction of special measures for sex offenders who commit crimes against minors is probably approved by the general public, although the results of scarce empirical studies emphasize that more repressive measures would also enjoy public support, given that the respondents were in favor of more stringent prison sentences, chemical castration, and even death penalty.[19] On the other hand, as stated upon the adoption of this Act, the legislator has high expectation from these special measures,

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[16] In French legislation, for example, registered offenders are required to confirm their home address once a year and to report any change of home address within a period of fifteen days from the date of respective change, which may be done either via registered mail with acknowledgment of receipt or by reporting to the police or the prosecution office. However, the perpetrators of serious crimes, sentenced to over ten years' imprisonment, are required to report in person and have their data checked more frequently, usually once in six months or every month in cases involving very dangerous offenders. In case of non-compliance with this obligation, the prescribed punishment is a two-year term of imprisonment and a fine of 30,000 Euros, alongside with the aforesaid additional mechanism. See Articles 706-53-5 and 706-53-8 *Code de procedure pénale,* with the latest amendments of 2016; http://www.legislationline.org/documents/section/criminal-codes, assessed on 8th April 2018.

[17] For example, in Great Britain, the information on the trip abroad has to include: the departure date, the name of the country of travel (if the trip covers more than one country, the person enters only the name of the country that is to be visited first), the place of arrival, the return date, and other information concerning the departure from and arrival in Great Britain, as well as information about other activities abroad. See Article 86, *Sexual Offences Act,* 2003 (with latest amendments of 29th May 2012), http://www.legislation.gov.uk/ukpga/2003/42/section/86; assessed on 8th April 2018.

[18] Commercial sexual exploitation of children is mostly prominent in Asia (especially in Thailand, the Philippines and India) but also in many African countries; it has become a serious problem in some Eastern Europe countries in the post-communist period. More in: Konstantinović-Vilić, S., Nikolić-Ristanović, V., Kostić, M., *Kriminologija*, Niš 2009, p. 146.

[19] More in: Petković, N., Đordjević, M., Balos, V. *Op. cit*, p. 74.

which are supposed to be more efficient than the sanctions formerly applied to sex offenders. However, in the countries where these special measures have been in effect for decades, there are different opinions on the actual effects of these measures. Some authors emphasize that it has not yet been proven that they have a significant impact on reducing criminal recidivism and increasing safety in the community (Levenson D`Amora: 2007, 168-199); some authors think that they are not effective at all in the context of sexual abuse and exploitation of minors within the family and among friends (Long, 2009: 161), while others consider them to be counterproductive (Wakefield, 2006: 141-149).

At present, it is still not possible to write about some experiences in Serbia, considering the fact that the Act on Special Measures for Preventing the Commission of Sex Crimes against Minors was adopted in 2013, and that there is still a lack of relevant empirical data for a more comprehensive assessment. On the other hand, this theoretical analysis has indicated certain problems. The catalogue of envisaged special measures is partly incompatible with the phenomenological characteristics of this type of crime in Serbia, which further implies that their special prevention effects and criminal policy justification remain disputable. The limiting factors in certain cases are the insufficiently defined execution procedure, the lack of technical equipment needed for supervision, and the lack of highly trained experts and special standardized programmes for sex offenders' treatment. The designated supervision offices in charge of the execution of these special measures still cannot adequately address the posed challenges and meet all the requirements for their effective application. The results of research conducted among supervision officers clearly show that their complaints mainly focus on the lack of employees and technical staff, a huge caseload, poorly organized network of supervision offices which cannot exercise relevant control over the offenders, and the lack of technical equipment (Spasojević, Arsenijević 2017: 28). Therefore, it can be concluded that the legislator may have acted a bit hastily when deciding to pass the Special Measures Act, but it was done for two reasons: to fulfill the obligations arising from the ratification of the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse Convention, and to calm down the general public justifiably revolted by several tragic cases of sexual abuse of minors with fatal outcomes.[20] Thus, Serbia has experienced the same "scenario" as many other countries: whenever minors are victims of sexual abuse, the subjective and sensationalist media reporting combined with the widespread "panic" among citizens results in the strengthening the instruments of criminal law repression by introducing inadequate measures of disputable efficiency. In that context, the adopted legal solutions should be definitely reassessed and revised in order to create a more logical and efficient protection system. This is probably the right time for such an action in the Republic of Serbia, particularly given the fact that the National Strategy on the Prevention and Protection of Children against Violence for the period 2018-2022 is currently being drafted.

[20] The Special Measures Act is also known as "Marija's Act", named after Marija Jovanović, an eight-year-old girl who was raped and murdered by the sex offender who had been previously convicted for sexual offenses against minors. The initiative came from the girl's father for purpose of preventing similar crimes in the future.

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POSEBNE MERE ZA SPREČAVANJE VRŠENJA KRIVIČNIH DELA PROTIV POLNE SLOBODE PREMA MALOLETNICIMA - PRIMER SRBIJE -

Konvencija o zaštiti dece od seksualnog zlostavljanja i seksualnog iskorišćavanja je ratifikovanjem postala deo našeg pravnog poretka, čime je i nastala obaveza da se različite mere koje predviđa u cilju suzbijanja ovog oblika kriminaliteta detaljnije urede, što je i ostvareno donošenjem Zakona o posebnim merama za sprečavanje vršenja krivičnih dela protiv polne slobode prema maloletnim licima. Ovaj rad predstavlja pokušaj da se detaljnije prouče tzv. posebne mere za sprečavanje dela protiv polne slobode prema maloletnicima, sa posebnim osvrtom na pojedina sporna pitanja.

Ključne reči: *seksualni delikti, maloletnici, posebne mere za sprečavanje krivičnih dela protiv polne slobode.*

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THE LEGAL FRAMEWORK OF OCCUPATIONAL SAFETY AND HEALTH SYSTEM IN SERBIA AND MONTENEGRO: COMPARATIVE REVIEW

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Abstract. *One of the most important interests of each society is to establish the highest level of occupational safety and health, with the aim of minimizing all adverse effects: injuries at work, occupational diseases, work-related illnesses. The ultimate imperative is the creation of such workplace conditions where the employee would have a sense of satisfaction in performing the assigned professional tasks. One way to achieve this ambitious goal is to have a legal regulation that creates a platform for effective occupational safety. This paper analyzes the legislation on occupational safety and health in the Republic of Serbia and the Republic of Montenegro. By comparing these two legal systems in the field of occupational safety and health, we will discuss the advantages and deficiencies of each, and provide some ideas for their improvement.*

Key words: *occupational safety and health, regulations, Serbia, Montenegro.*

INTRODUCTION

Occupational safety and health imply the fulfillment of such conditions of work in which certain measures and activities are undertaken in order to protect the life and health of employees and other persons who are entitled to that right. This concept has been analyzed by numerous theorists and it is the subject matter of study in many scientific disciplines: sociology, law, economics, psychology, etc. (Anđelković, 2010:154-155). The goal of the society as a whole, and each individual in particular, is to create the highest possible level of safety and health at work. Every company should make an effort to minimize injuries at work, occupational diseases and work-related illnesses, which

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implies the creation of a work environment in which an employee would have the sense of satisfaction in performing the assigned professional tasks. It is not easy to achieve such ambitious goals but the legal regulation of this matter may significantly contribute to accomplishing these goals.

Occupational safety and health are regulated by numerous legal acts: the constitution, laws, by-laws. When looking at the hierarchy of legal documents of a state, the constitution has the highest legal power; it is followed by legislative acts and, finally, by-laws (administrative acts, rulebooks, decisions, etc.). Strategic documents are also of great importance for the regulation of this issue. All these types of legal documents regulate the issue of safety and health at work in any country, including the Republic of Serbia and the Republic of Montenegro.

This paper will provide comparative analysis of legal regulations on occupational safety and health in the Republic of Serbia and the Republic of Montenegro. Since Serbia and Montenegro were until recently constituent parts of one state, it is important to examine the directions in the development of respective legal frameworks of their occupational safety and health systems. Firstly, the issue of occupational safety and health will be analyzed by examining the constitutional documents of the respective states, and then the strategic documents, legislative acts and by-laws. In the Republic of Serbia, occupational safety and health issues are regulated in the Serbian Constitution, the Strategy on Health and Safety at Work, Occupational Safety and Health Law, and many by-laws, primarily administrative acts and rulebooks (Ilić-Petković, 2017:119-122). Within the legal system of Montenegro, we analyzed the Constitution, the Strategy for the Promotion of Occupational Safety and Health, the Act on Safety and Health at Work, and by-laws (primarily rulebooks).

Based on the provided review of the aforesaid regulations applicable in both countries, we will compare the types of documents that address the issue of workplace safety and health. It will allow us to observe the extent to which legal regulations on safety and health at work in these countries have been developed, compare the degree of development of their legal systems in this area, and consider the possibility of adopting some new regulations on this matter in Serbia. All this will undoubtedly contribute to the improvement of occupational safety and health legislation in both countries.

1. CONSTITUTIONAL DOCUMENTS

The right to safety and health at work is guaranteed by the Constitution of the Republic of Serbia[1], which envisages that everyone has the right to occupational safety and respect for the dignity of each person at work. As the highest legal act and the basic source of rights, the Serbian Constitution guarantees the right to work, the right to respect of dignity at work, safe and healthy working conditions, necessary workplace protection, limited working hours, daily and weekly rest, paid annual holiday, fair remuneration for work done, and the right to legal protection in case of termination of employment. No person can forgo these rights. Women, young and people with disabilities are provided with special protection at work and special working conditions, in accordance with the law (Article 60, Constitution RS). Therefore, the Constitution of Serbia explicitly

[1] Constitution of the Republic of Serbia, *Official Gazette RS*, 98/2006

guarantees the right to occupational safety in the broadest sense of the word (Krstić, Anđelković, 2013:52-53). It shows the state's awareness of the importance of this issue, which is regulated in the highest legal act.

Furthermore, the Constitution provides that the Republic of Serbia shall be competent to regulate and provide "a system in the area of labor relations, protection at work, employment, social insurance and other forms of social security" (Article 97(8), Constitution RS). This constitutional provision means that the state is obliged to adopt legal regulations and establish the necessary mechanisms in order to provide systemic functioning of occupational safety. Therefore, in the Republic of Serbia, the right to protection at work is classified as one of the most important rights guaranteed by the Constitution as the legal act of highest legal force. Further elaboration of these constitutional principles is achieved through legal regulations in the field of occupational safety and health and the documents of lower legal force. Thus, the Occupational Safety and Health Act[2] is a basic legislative act which elaborates on the aforesaid constitutional proclamations and provides for their application in practice. Numerous by-laws have been adopted on the basis of this Act. Strategic documents that rely on the Constitution and the enacted normative framework are of special importance in this area of law.

The Constitution of the Republic of Montenegro was adopted in 2007[3]. The Constitution guarantees the right to work, free choice of occupation and employment, fair and humane working conditions and protection during unemployment. Every employee has the right to adequate earnings, as well as the right to limited working hours and paid annual holiday. The Constitution explicitly states that all employees have the right to protection at work, while the right to special protection at work is provided for the young, women and people with disabilities (Article 64, Constititution RM). In Montenegro, the constitutional proclamations are further elaborated in the Act on Safety and Health at Work, a number of regulations, and particularly the Strategy for the Promotion of Occupational Safety and Health.

Therefore, in the Constitution of Montenegro, the right to protection at work is regulated in a similar way as in the Constitution of Serbia. In both cases, the right to protection at work is considered as a special right that is unambiguously and explicitly treated as one of the highest-ranked rights in the state. It indicates that both countries are aware of the fact that motivated and satisfied workers are an important prerequisite for the social and economic well-being of each state. Occupational safety and health contribute to greater employee satisfaction, greater productivity and greater interest in achieving organizational goals and interests. Ultimately, it has multiple positive effects on the state itself.

2. STRATEGIC DOCUMENTS

In Serbia and Montenegro, there are strategic documents dealing with the issue of occupational safety and health. In Serbia, this important document is the Strategy on Health and Safety at Work for the period 2013-2017, which is accompanied by the Action Plan for the Implementation of the Strategy for Health and Safety at Work of the

[2] Occupational Safety and Health Law, *Official Gazette RS*, 101/2005, 91/2015, 113/2017

[3] Constitution of the Republic of Montenegro, *Official Journal of the Republic of Montenegro*, 1/2007, 38/2013

Republic of Serbia for the period 2013-2017. In Montenegro, the Strategy for the Promotion of Health and Safety at Work for 2016-2020 is currently in force, alongside with the Action Plan for its implementation.

The Strategy on Health and Safety at Work in the Republic of Serbia for the period 2013-2017[4] is a governmental act which fully determines the circumstances in the field of safety and health at work in Serbia, and stipulates the measures to be taken for its development. In other words, it defines the activities, goals and directions of improvement in this area. This strategy is a continuation of the implementation of the previous strategy that was valid for the period from 2009 to 2012. As in the previous period, this Strategy aims to create a socio-economic motivation for all participants in the work processes in order to increase the number of business entities who actively manage occupational safety and health, and improve the conditions in this area. Based on this Strategy, which was envisaged for the period until 2017, a new one is to be adopted for the upcoming period.The development of a new strategic document is in progress and it is expected to set new goals in this area, based on the overview of the current situation and the analysis of effects that were achieved on the basis of the Strategy for the 2013-2017 period.

The vision of the Strategy for the period 2013-2017 is continuous work on improving this area by supporting the regulations in the field of occupational safety and health, joint work of employers and employees in the improvement of this area, raising awareness in this area, improving knowledge and skills, establishing work ethics and creating preconditions for work-related well-being and the quality of life and health at work. The mission of the Strategy is to establish a system that delivers safe and healthy working conditions and ensures the reduction of occupational injuries, occupational diseases and work-related illnesses. Of course, it can be expected that the next strategic document shall have its own vision and mission based on such ideals. Similar to the currently valid document, the next strategic document is expected to provide for establishing the institutional framework for its realization, an overview and description of the current situation, identification of the general and individual strategy goals, proposal of activities and measures for the realization of the goals set, etc. Based on this Strategy, the Action Plan for the Implementation of the Strategy on the Safety and Health at Work of the Republic of Serbia for the period 2013-2017[5] was adopted as an accompanying document, which is also expected in terms of the new strategy for the forthcoming period.

In Montenegro, the main strategic document related to occupational safety and health of employees is the Strategy for the Promotion of Occupational Health and Safety in Montenegro 2016-2020, with the Action Plan for its Implementation[6]. The Strategy points out that Montenegro, through the ongoing transition process, has a humane development strategy with the desire to keep up with the trends of the advanced social achievements among the European peoples within the framework of the established integration. To this end, it is important to establish new and contemporary development goals within the framework of occupational safety and health of the employees in their working and social environment, based on the previous experience and achievements of

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[4] Strategy on Health and Safety at Work in the Republic of Serbia for the period from 2013 to 2017, *Official Gazette* RS, 100/2013

[5] Conclusion on the Adoption of Action Plan for the Implementation of Strategy on Health and Safety at Work in the Republic of Serbia for the period from 2013 to 2017, *Official Gazette RS*, 81/2014

[6] Strategy for the Promotion of Occupational Health and Safety in Montenegro 2016-2020, with the Action Plan for its Implementation, http://www.uznr.me/regulative/Strategija%20ZZNR.pdf, 22.12.2017.

comparative legislation. The effectiveness of occupational health and safety greatly depends on the socio-economic conditions, the degree of economic development and the tradition of each state. To ensure the observance of occupational health and safety standards, it is of primary importance to have a legislative framework that defines the subjects, their rights and obligations, mutual relations, responsibilities, activities and instruments for exercising these rights.

The vision of occupational health and safety is reflected in the need to ensure the development of prevention and improvement of occupational health and safety through safe and healthy workplaces that will create adequate working conditions for employees and employers alike, productivity growth, competitiveness and economic development. The mission is to set and apply quality standards in occupational safety, strengthen the quality of work of occupational safety professionals, raise awareness, provide data monitoring and system analysis, exchange good practice, improve the information flow and knowledge in the field of occupational health and safety[7]. This Strategy includes a legal framework for occupational health and safety. It also provides a vision of occupational health and safety, provides an overview and analysis of the current situation, assesses the main challenges, sets out key strategic goals, and provides the Action Plan for its implementation.

Looking at the strategic documents enacted in the two countries, it can be noted that Serbia has a strategy and an action plan as two separate documents, while Montenegro has a strategy with the action plan as a single document. In terms of validity, it can be noticed that the Strategy of Montenegro is a currently valid document whereas the Strategy of Serbia expired in 2017, so it is necessary to ensuring legal continuity by adopting a new one in the near future. In general, the structure of both strategies is similar and the strategic goals of both countries are similar in nature, given the similar circumstances and challenges in both countries.

3. LEGISLATIVE ACTS

Both the Republic of Serbia and the Republic of Montenegro have enacted legislative acts which regulate the occupational safety and health system. In Serbia, this matter is regulated by the Occupational Safety and Health Act, adopted in 2005; in Montenegro, it is regulated by the Act on Safety and Health at Work, adopted in 2014.

In Serbia, the Occupational Safety and Health Act (hereinafter: OSH Act)[8] regulates the implementation and improvement of occupational safety and health of persons involved in working processes and different working environments, in order to prevent injuries at work, occupational diseases and work-related illnesses. The OSH Act was adopted in 2005 and subsequently amended in 2015 and 2017 in order to eliminate certain shortcomings observed in its former implementation. This Act defines the persons entitled to occupational safety and health protection, determines preventive measures for ensuring workplace safety and health, stipulates the obligations and responsibilities of the employer in relation to ensuring safety and health at work (general obligations, special obligations and training for employees). It also regulates the rights and obligations of employees, the way of organizing the task of occupational safety and health, the possibility of selecting representatives among

[7] Strategy for the Promotion of Occupational Health and Safety in Montenegro 2016-2020, with the Action Plan for its Implementation, http://www.uznr.me/images/2018/regulativa/Strategija_ZZNR.pdf 22.12.2017. (p.5);
[8] Occupational Safety and Health Act, *Official Gazette RS, 101*/2005, 91/2015, 113/2017

the employees for occupational safety and health, obligations of the employer related to keeping records, information exchange and cooperation with relevant institutions, the issue of the professional exam and licensing, the competence of the Occupational Safety and Health Administration. The provisions of the Occupational Safety and Health Act are further elaborated in numerous by-laws, for the purpose of regulating the specific implementation procedures.

In Montenegro, the Act on Safety and Health at Work was adopted in 2014.[9] It stipulates that health and safety at work are ensured and implemented through the application of modern technical, technological, organizational, health, social and other measures and means of protection (Art 1). According to this Act, occupational health and safety imply providing working conditions that do not lead to injuries at work, occupational diseases and work-related illnesses, and create preconditions for full physical and psychological protection of employees (Art 2). In addition to its basic provisions, the Act contains general conditions and protection measures, regulates the rights, obligations and responsibilities of the employer (to secure and implement the protection measures, risk assessment, etc.), as well as the rights and obligations of employees, organization of occupational health and safety at work, the obligations in terms of keeping records, cooperation and reporting, and the like. The provisions of this Act are further elaboated in numerous by-laws.

Based on the analysis of the structure of the Montenegrin Act on Safety and Health at Work, it can be noted that its structure is very similar to the structure of the Serbian Occupational Safety and Health Act. Furthermore, the majority of legal solutions are similar or identical in nature, which is a logical consequence of common social, political, economic and cultural circumstances in these two countries.

4. By-Laws

In Serbia and Montenegro, there is a number of by-laws that regulate and elaborate more closely the provisions of the aforementioned legislative acts. When it comes to the structure of by-laws, there are several acts and rulebooks in the field of occupational safety and health which are in force in Serbia. In Montenegro, this issue is regulated only by rulebooks.

In Serbia, safety and health at work are regulated by 8 administrative acts and 55 rulebooks (Ministry of Labor, Employment, Veterans' Affairs and Social Affairs of the Republic of Serbia, 2017). In Montenegro, this issue is regulated by 46 rulebooks (Ministry of Labor and Social Welfare of the Republic of Montenegro, 2017). The number of these by-laws should be taken only provisionally, given that new regulations are being adopted all the time. Namely, some issues regulated in these by-laws are directly related to protection of employees at work, primarily their physical integrity. There are many regulations of this kind, such as: the Rulebook on Preventive Measures for Safe and Healthy Work when Exposed to Biological Hazards in the Republic of Serbia (2010)[10], or the Rulebook on Measures of Protection when using Work Equipment in Montenegro

[9] Law on Safety and Health at Work, Official Journal of the Republic of Montenegro, 34/2014

[10] Rulebook on Preventive Measures for Safe and Healthy Work when Exposed to Biological Hazards, *Official Gazette RS,* 96/2010

(2015)[11]. In fact, the largest number of rulebooks in both countries deals with the protection of the physical integrity of the employees. But, taking into account the need to protect their psychological and moral integrity at work, the number of these regulations has significantly increased. An example of such regulation in Serbia is the Rulebook on the Rules of Conduct of Employers and Employees concerning Prevention and Protection from Harassment at the Workplace (2010).[12]

In examining the by-laws enacted in the two countries, we may conclude that they can be classified into several groups. The first group consists of by-laws existing in both countries in the form of rulebooks, such as: the Rulebook on Records in Safety and Health at Work in Serbia (2015)[13] and the Rulebook on Keeping Records in the Area of Safety at Work in Montenegro (2005) [14]. The second group includes by-laws on certain issues that are regulated in only one of these two countries. Thus, in Serbia, protection against exposure to electromagnetic fields is regulated by the Rulebook on Preventive Measures for Safe and Healthy Work When Exposed to Electromagnetic Field (2015),[15] while there is no such regulation in Montenegro. On the other hand, in Montenegro, there is the Rulebook on Occupational Safety Issues which are to be Regulated by the Labor Contract (2005),[16] while in Serbia this issue is not regulated by any special by-law. Finally, the third group of includes by-laws that have been in force since the time when the two countries were constituent parts of a single state. These are, for example, the Rulebook on Special Occupational Safety Measures and Rules for the Processing of Leather, Fur and Leather Refuse (1970)[17] or the Rulebook on Special Protective Measures for Thermal Processing of Light Metals Alloys in Nitrate Salts Baths (1956)[18].

Therefore, it can be noted that the specific issues pertaining to safety and health at work are are regulated by administrative acts and rulebooks in Serbia, and only by rulebooks in Montenegro. It is important to bear in mind that this is only an indicative number of regulations in these countries as there are many other by-laws that deal with this issue in a certain indirect way. In fact, many labor law institutes can be examined in the context of workplace safety. Yet, it can be clearly recognized and directly realized only in some cases, while in most cases it is achieved in an indirect and less visible (but still apparent) way.

All of the aforementioned documents clearly play a significant role in ensuring adequate working conditions and occupational health and safety protection by specifying the procedural rules regulating the application of the provisions envisaged in the legislative acts of the two countries.

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[11] Rulebook on Measures of Protection when Using Work Equipment, *Official Journal of the Republic of Montenegro,* 27/2015

[12] Rulebook on the Rules of Conduct of Employers and Employees Concerning Prevention and Protection from Harassment at the Workplace, *Official Gazette RS,* 62/2010

[13] Rulebook on Records in Safety and Health at Work, *Official Gazette RS,* 62/2007, 102/2015

[14] Rulebook on Keeping Records in the Area of Safety at Work, *Official Journal of the Republic of Montenegro*, 67/2005

[15]Rulebook on Preventive Measures for Safe and Healthy Work When Exposed to Electromagnetic Field, Official Gazette RS, 111/2015

[16] Rulebook on Occupational Safety Issues which Are to Be Regulated by the Labor Contract, Official Journal of the Republic of Montenegro, 67/2005

[17] Rulebook on Special Occupational Safety Measures and Rules for the Processing of Leather, Fur and Leather Refuse, Official Journal SFRJ, 47/1970

[18] Rulebook on Special Protective Measures for Thermal Processing of Light Metals Alloys in Nitrate Salts Baths, Official Journal SFRJ, 48/1965

5. Instead of a Conclusion: the Importance of Unifying Regulations on Occupational Safety and Health

Occupational safety and health imply ensuring the working conditions in which activities and measures can be taken to protect the life and health of employees and other persons who are entitled to exercise these right. The interest of each individual, society and all other subjects is to achieve the highest possible level of workplace safety and health, and to minimize all adverse effects (injuries at work, occupational diseases and work-related illnesses). The goal of every society is to provide working conditions which would generate the sense of satisfaction in employees performing the assigned professional tasks. This goal is a serious challenge for every society. Legal regulations of the state play an important part in accomplising this goal because they provide a normative framework for the occupational health and safety system, which provides the rules of conduct for all entities within the system and sanctions for their violation.

In that sense, the unification of regulations on occupational safety and health at the level of several states, or states within a region or, ideally, the entire international community, would be a step forward. What is realistic in the current circumstances is the unification or, at least, harmonization of workplace safety and health regulations of neighboring states which have similal social, political, economic and other circumstances, which is the case with the Republic of Serbia and the Republic of Montenegro. Until recently, they were an integral part of one state, and they are both in the process of transitiontran, which makes them similar in many respects..

Based on the conducted research and provided comparative analysis of occupational safety and health regulations in the two countries, a number of conclusions can be drawn. First, occupational safety and health is a right guaranteed by the constitutional documents of both countries. In this way, both countries clearly demonstrate their determination to regulate the occupational health and safety system as a matter of highest importance. Then, in both countries, there is a legislative act that regulates workplace health and safety: the 2005 Occupational Safety and Health Act in the Republic of Serbia, and, the 2014 Act on Safety and Health at Work in Montenegro. The fact that the Serbian act was passed considerably earlier than the Montenegrin one may imply that Serbian experience in the application of this law could have served as a basis for the same act in Montenegro. The process of drafting a new law on safety and health at work is under way in Serbia, which means that the Montenegrin experience can be useful in regulating this issue in Serbia. Furthermore, there is a number of by-laws pertaining to this matter in both countries. In Serbia, the Occupational Safety and Health Act is elaborated in administrative acts and rulebooks, while in Montenegro there are rulebooks only. Serbia has adopted more by-laws than Montenegro, which may be a logical consequence of the fact that its current law has been applied since 2005. It can also be concluded that both countries have rulebooks with similar or identical names, indicating that both of them have recognized the need to regulate these issues in more detail. Then, there are the issues that are regulated by rulebooks in one state but remain unregulated in the other. Finally, the normative frameworks of both states include some rules which have been applied since the 1960s or 1970s, when Serbia and Montenegro were constituent parts of a single state. In addition to all the aforementioned regulations, both countries have their own strategies in this area, accompanied by relevant action plans, all of which confirms their commitment to establishing an effective occupational health and safety system.

Based on all of the above, it is a positive fact that both countries contain a normative framework pertaining to the system of occupational safety and health. The framework includes: a) *constitutional documents*: the Constitution of R. Serbia and the Constitution of R. Montenegro; b) *legislative acts:* the Occupational Safety and Health Act in Serbia and the Act on Safety and Health at Work in Montenegro; c) *by-laws* (primarily rulebooks); and d) *strategic documents* on occupational safety and health. However, in every legal system, regulations have full meaning only if they are applied in practice. It is the ultimate test for assessing the actual operation and effectiveness of any system, including the occupational safety and health system. Therefore, it is important to bear in mind that these two states should provide efficient mechanisms for controlling the application of all of the aforementioned regulations and effective sanctions for their violation. Only then will the envisaged regulations be fully meaningful and puposeful. Controlling the application of the envisaged regulations should be effective since it is the ultimate confirmation of the existence and regularity of a legal system.

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Pravilnik o posebnim mjerama zaštite na radu pri termalnom obrađivanju legura lakih metala u kupatilima sa nitritnim solima (Rulebook on Special Protective Measures for Thermal Processing of Light Metals Alloys in Nitrate Salts Baths), *Službeni list SFRJ*, 48/1965

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PRAVNI OKVIR SISTEMA BEZBEDNOSTI I ZDRAVLJU NA RADU U SRBIJI I CRNOJ GORI – KOMPARATIVNI PREGLED

Jedan od značajnijih interesa svakog društva jeste stvaranje najvišeg mogućeg nivoa bezbednosti i zdravlja zaposlenih na radu, a sa ciljem da se sve neželjene posledice (povrede na radu, profesionalne bolesti, bolesti u vezi sa radom) svedu na najmanju moguću meru. Krajnji imperativ jeste stvaranje takvih uslova rada u kojima bi zaposleni imao osećaj zadovoljstva prilikom izvršavanja profesionalnih zadataka koji su pred njega postavljeni. Jedan od načina za ostvarenje ovako ambiciozno postavljenog cilja jeste postojanje pravne regulative koja stvara platformu za efikasnu zaštitu zaposlenih na radu. Ovaj rad bavi se analizom zakonske regulative o bezbednosti i zdravlju na radu u Republici Srbiji i Republici Crnoj Gori. Komparacijom ova dva pravna sistema u oblasti bezbednosti i zdravlja na radu biće omogućeno sagledavanje prednosti i nedostataka svakog od njih, uz određene ideje za njihovo unapređenje.

Ključne reči: *bezbednost i zdravlje na radu, propisi, Republika Srbija, Republika Crna Gora.*

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Review Paper

BALANCED ECONOMIC GROWTH FROM THE STANDPOINT OF MODERN GROWTH THEORIES

UDC 330.34

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Abstract. *For decades, world economy has been going through certain processes which vary from expansion to stagnation, and vice versa. For this reason, the factors or causes of economic growth are the key question which dates from the 1770s and Adam Smith's landmark work "An Inquiry into the Nature and Causes of the Wealth of Nations". Integrated through world economy, national economies are going through some of the changes which can be explicitly explained by observing the quality of economic growth. Thus, there are regions with sustainable development and balanced economic growth; on the other hand, there are expanding economies which are designated as developing countries. Distortion of world economy, observed through economic growth and inequality of national economies, from the standpoint of economic theories, can be explained by various models of economic growth.*

Key words: *economic growth, balanced economic growth, inequality, economic growth models.*

1. Introduction

The complexity of economic structure stems from the background of dynamic economic multifaceted relations, which lead to both quantitative and qualitative economic growth. Thus, the quantitative economic growth, measured by the increase of the gross domestic product (GDP), is the consequence of an adequate qualitative growth, which is reflected in structural changes.

The competitive force of the capitalist economic development was reflected in balanced economic growth, which was based on increased productivity of industrial production and competitive market mechanisms. However, nowadays, that paradigm has been undermined by the development of information technologies, and economic

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theoreticians encounter new challenges in defining the mechanisms of economic growth in modern society.

2. The Neoclassical Model of Economic Growth

In traditional neoclassical models of economic growth, the differences in quality of economic growth between countries are determined by observing the accumulation factors. According to *Solow* (1956), disparity expressed by income per capita is based on difference in saving rates; according to *Cass* and *Koopmans* (1965), it is based on preferences and exogenous parameters such as total productivity growth and technical progress (Acemoglu, Johnson, Robinson, 2004: 1).

For a relatively long period of time, *Solow*'s model of economic growth was the leading model of economic growth of neoclassical theory. Along with the existing factors of economic growth: natural resources, labor and capital, *Solow'*s model incorporated technology as another factor of economic growth. Solow determines the national savings rate and the population rate from the standpoint of exogenous approach. The emphasis is on the real sector in economy, which is determined by full employment. Technology is regarded as a public good (asset) which is equally accessible to all economic actors in the society, characterized by perfect competition (Cvetanović, Leković, 2012: 189).

Neoclassical models of economic growth start from the exogenous point of view in assessing long-term economic growth. Nevertheless, the exogenous approach to examining economic growth has its shortcomings and weaknesses. Solow states technical changes as an exogenous factor and the basic mechanism of economic growth. As changes in productivity are of exogenous nature, according to Solow, they are regarded as a result of conscious activity of economic actors; hence, the change in productivity should be analyzed through mechanisms which generate better productivity as well as through the factors which indicatively result in long-term differences between countries (Jones, Manuelli, 2004: 3).

Neoclassicists explain the inequality of economic growth between countries from the standpoint of growth of production value, which is considered to be the result of observable growth in three factors: labor – through increase of education and employment; capital – through increase in savings and investments, and technological innovations (Cvetanović, Leković, 2012: 190). This model of economic growth is illustrated in *Formula 1*.

Formula 1: The general form of production function in the neoclassical model of economic growth (Barro, Sala-i-Martin, 2004: 27).

$$\mathbf{Y = F(K, L, T)}$$

Y – total output
K – physical capital
L – labor
T – technology (knowledge)

According to Barro and Sala-i-Martin (2004), economic growth is determined and conditioned by the role of production. It is considered to be neoclassical in nature if it entails the following characteristics:

- Constant return of capital and labor;
- At a constant level of labor and technology, each additional increase of capital leads to projected increase of output, while these projections decrease with the increase in number of machines, i.e. technological changes. The same assumptions apply to labor as a factor of production;
- *Inada* (1963) conditions: Borderline product of capital or labor is getting nearer to infinity as capital, or work, is getting nearer to 0, and vice versa;
- Essentiality: Inputs are regarded as an essential category of production process if a certain positive quantity of input is necessary for the equal quantity of output to be produced.

Starting from the unconditional convergence approach (which is based on decreasing yield on capital) and regarding technology as a public good (asset), neoclassicists believed that undeveloped countries with the same savings and investments rates, according to increase of capital productivity, gain all the comparative advantages to reach the level of developed countries (Cvetanović, Obradović, Đorđević, 2011: 3).

3. Endogenous Character of Growth

As opposed to neoclassical views, endogenous theories regard economic growth through influence of endogenous factors. Neoclassical models of growth attributed work productivity growth to exogenous parameters, like technical innovations, which resulted in increase of capital, which on the other hand led to increase in production and consumption. Endogenous approach regards that same growth through endogenous processes, therefore instead of technical innovations, explicit creation of conditions of technical progress through intensified research and development areas of production is stated (Jones, Manuelli, 2004: 4). This model of economic growth is illustrated in *Formula* 2.

Formula 2: The general form of production function in the endogenous model of economic growth (Cvetanović, *et al.,* 2011: 5)

$$\mathbf{Y = F\ (R, K, H)}$$

Y – total output;
R – research and development;
K – accumulated capital stock;
H – accumulation of human capital (Romer 1994).

Stating the accumulation of human capital as one of the factors of productivity, endogenous theories annul the relationship between economic growth and decreasing yield on capital. They focus on technological changes as the crucial carrier of endogenous economic growth, which is achieved by constantly improving the existing workforce and creating conditions for technological advancement (Cvetanović, *et al.,* 2011: 5).

4. Institutional Aspects of Economic Growth

Having in mind the previous theories which did not pay any attention to institutions, in the past few years, economic theory has been shaped through institutional theory which is

based on macroeconomic policy and institutions as factors of growth (Nallari, Griffith, 2011: 55).

It is often implied that enormous differences between national economies are built into economic and social institutions which determine the rules of functional and effective economy. Those rules are fundamental determinants of the organizational system of production and exchange, i.e. they are determinants of the diffusion of economic growth (Sengupta, 2011: 3).

In spite of ample attempts of economic theorists to explain the mechanisms of economic growth, it seems that there is no uniform explanation of the economic growth category. According to *North and Thomas*, innovations, volume economics, education and accumulation of human capital are not factors of economic growth, but they represent "growth" by themselves (Acemoglu, *et al.,* 2004: 1). Thus, in their opinion, accumulation and innovations are singled out as direct sources of growth, whereby the comparison of economic growth is based on differences in institutions.

The influence of institutions can be understood only by considering the viability of prospective goals. The prospects of an economy are not based on reaching balance but on achieving future optimum which has not been achieved yet, due to dynamic changes of technical and technological advancement and new knowledge which change the past but affect future prospects as well (Reinert, 2006: 7).

4.1. Influence of economic institutions on economic growth

The influence of economic institutions on economic growth can be multiple. According to *Chang*, economic institutions should ensure investments in the means of production, social protection, as well as in macroeconomic stability. According to this author, various institutions can have the same function in different societies, when observed comparatively, but they can also have the same function within the same society but in various periods of development (Chang, 2007: 5). Such comprehension of multiple effects of institutions could be explained by the lack of proper relationship between the function and the institutional form.

Acemoglu, Johnson and Robinson examined the importance of economic institutions for economic growth through the influence on investing in physical and human capital, technology, but also through production organization (Acemoglu, et al., 2004: 2). Without disputing the importance of cultural and geographical factors for economic growth, these authors point out that the differences between economic institutions are the primary cause of inequality in economic growth and wellbeing in different countries.

Consequently, the influence of economic institutions can be currently observed by assessing the quality growth and, in the future, through the distribution of resources (Figure 1).

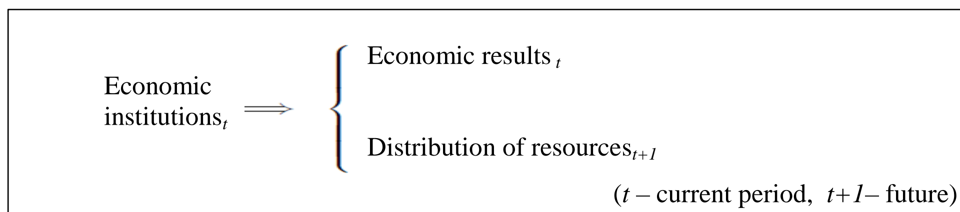

Figure 1 Influence of economic institutions (Acemoglu, *et al.,* 2004: 3)

Therefore, distribution and allocation of resources are determined by the ownership structure and property relations, through explicit influence of economic institutions. This approach gets its verification in conditions of imperfection of the market mechanism which is the consequence of existance of transaction expenses and imperfection of information. Thus, institutions are verified as a key carrier of economic development in the extent by which they are able to reduce these expenses (Bardhan, 1989: 1389).

4.2. Influence of political institutions on economic growth

In the case of absence of transaction expenses, property rights are not considerable from the standpoint of gaining efficiency, since they could be changed and corrected with the aim of increasing production. Since transaction expenses are usually considerable, distribution of resources is more difficult due to the aforesaid market imperfection, which eventually contributes to the emergence of opportunistic behavior of economic actors (Bardhan, 1989: 1389).

Observing the development from the standpoint of the evolutionist approach, *Sengupta* states that it is determined, just like the production itself, by "the rules of the game" through the operation of the market system and the normative framework which is, among other things, the result of the dominant influence of the ruling structure (Sengupta, 2011: 3). This brings us to a new category of institutions - political institutions and the source of "political power".

In terms of power of political insitutions, *Acemoglu et al. (*2004: 4) differentiate *de jure* (according to law) and *de facto* (actual) political power, making a precise distinction from the standpoint of their influence on economic institutions and distribution of resource (Figure 2).

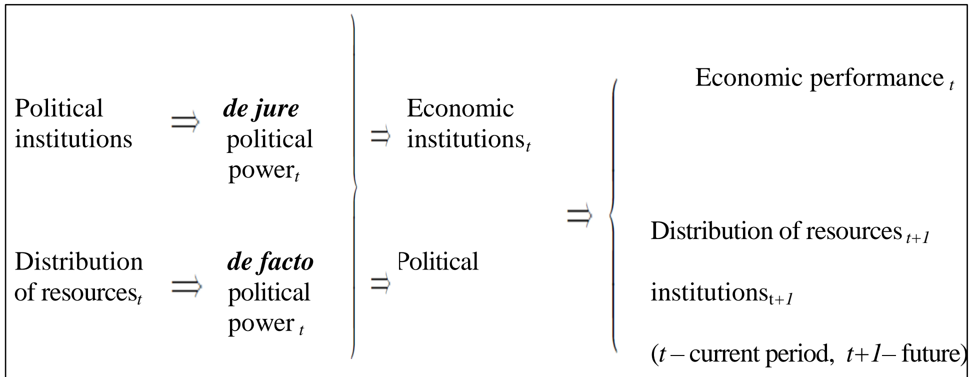

Fig. 2 Influence of political institutions (Acemoglu, *et al.,* 2004: 6)

According to *Acemoglu et al.* (2004: 5), the endogenous character of economic institutions leads to observing them through the matter of collective choice, where political power is stated as a determinant which defines the choice of economic institutions in a society. As different economic institutions determine the distribution of resources, in case of conflicts in interest, the choice will depend on the political rule. Political ruling is of an endogenous character as well, which further leads to the differentiation of *de jure* political power that stems from political institutions and their current action through determining the form of ruling and limiting the power of the political elite.

The institutional system results in *de jure* political ruling which explicitly affects the choice of economic institutions. However, *de facto* political power is also present in the society but it does not stem from institutional activities of political institutions; it is actually connected with activities of an individual or groups that have political power. This form of political power stems from the capacity of an individual or a group of individuals acting together to impose their interests on society. *De facto* political power depends on economic resources of those individuals or groups, by which they implicitly affect the actions and choice of political institutions in the future (Figure 2).

5. CONCLUSION

All things considered, the neoclassical approach in its core starts from a perfect economic system which does not recognize the impact of economic exteralities. That kind of approach is not realistic: it hinders the comparative analysis of long-term growth between the countries, and it regarded as a fundamental reason that precludes endeavours to explain the difference in economic growth between undeveloped and developed countries.

Economic externalities, such as imperfect competition and underemployment, have conditioned the emergence of a new approach to explaining economic growth which starts from the standpoint of endogenous factors. Thus, economic growth is explained by examining the factors operating strictly within the frame of the economic system itself.

The significance of technological advancement for economic growth has been stated ever since Joseph Schumpeter introduced the concept of “creative destruction” as the force behind long-term economic growth. A model cannot generate economic growth unless it is based on endogenous technological advancement, which is nowadays defined as learning by doing (through work and practice). Among other things, technological advancement brings about structural transformation, and technology is stated as a key factor of production cycle which may compensate for the limitations of certain actors and thus enable economic growth.

Within the domain of neoclassical and endogenous theories, economist endeavoured to understand the complex nature of economic growth and development. Unequal economic growth and development of world economy were explained through factors of production. Yet, from the stanpoint of institutional theory, this kind of approach is incomplete.

Modern economic growth and prosperity are part of complementary activities of economic and political institutions. According to modern theories of economic growth, the exclusion of institutions (both economic and political ones) leads to stagnation and poverty. However, history has proven that economic growth is possible even without including economic institutions if their impact is compensated by the influence of the political elite through placing funds into hyperproductive activities which are under the control of the political elite.

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URAVNOTEŽEN PRIVREDNI RAST SA STANOVIŠTA SAVREMENIH TEORIJA RASTA

Svetska ekonomija, decenijama unazad, prolazi kroz određene procese koji se kreću relacijom ekspanzija – stagnacija. Tako su elementi, odnosno uzroci privrednog razvoja, ključno pitanje koje datira još od sedamesetih godina i Adama Smita. Nacionalne ekonomije integrisane kroz svetsku ekonomiju prolaze kroz neku od transformacija koja se eksplicitno može objasniti posmatranjem kvaliteta privrednog rasta. Tako na jednoj strani imamo regione sa održivim razvojem i uravnoteženim privrednim rastom, ali i ekonomije koje se svojom ekspanzijom kategorišu kao zemlje u razvoju. Distorzija svetske ekonomije, posmatrana kroz privredni rast i nejednakost nacionalnih ekonomija, sa stanovišta ekonomske teorije može se eksplicirati različitim modelima privrednog rasta.

Ključne reči: *privredni razvoj, uravnotežen privredni rast, nejednakost, modeli privrednog rasta.*

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Review Paper

ANATOMY AND CONSEQUENCES OF RENT-SEEKING

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Abstract. *Economic development and the success of economic policy through which the development goals are achieved can be interpreted as a product of political interactions between citizens and rulers, and social interactions between members of society in the broader sense. As structures and mechanisms of social order, institutions manage the behavior of a group of individuals within a given community. Institutions affect the accountability and responsiveness of officials to citizens and interest groups and, thus, determine the size of the rents created. Further, institutions influence the degree of political control of public bureaucrats and, thus, the distribution of rents within the public sphere. The aim of this paper is to present the concept of rent-seeking and, using an empirical case, to elaborate on its emergence, development and ultimate consequences.*

Key words: *rent-seeking, interest group, resource dissipation, lobbying.*

1. INTRODUCTION

It is not a novelty to claim that the performance of an economy is shaped by its institutions. Institutions make the rules of the game in an economy. If these rules foster activities that generate high private benefits and low social benefits, then the economy performs poorly. Conversely, if the rules align private and social benefits, economic growth and high social welfare ensue. “Economic history may be thought of as a struggle between a propensity for growth and one for rent-seeking, i.e. for someone improving his or her position, or a group bettering its position, at the expense of the general welfare” (Jones, 1988, according to: Barelli, de Abreu Pessôa, 2002: 1)

Economic science also gives other explanations on the motivation of *politicians*, besides altruistic understanding. During the 1960s, there was a striking trend in the economy based on the assumption that the concepts used to describe the behavior of

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businesses and consumers, as well as the system of means of analysis, can be applied to the analysis of the political decision-making mechanism. This is "the *theory of collective decision-making*." Who are the holders of interest who participate in political decision-making? They are *voters*, *elected politicians*, *public officials, experts in the administrative system* and various *influential interest groups* (lobbies). When deciding, these carriers of interest behave like a *homo economicus:* they strive to provide themselves with maximum welfare.

From the methodological viewpoint, rent-seeking approaches follow rational choice theory and start from the aprioristic thesis that interpersonal and social action is determined by a tautologically defined rational economic interest: considering that acting subjects (individuals, parasitic sectional interest groups, or even entire nations) are characterized by economic selfishness, they seek to maximize their own gains (Markantonatou, 2013: 6). The founder of contemporary economic science, Adam Smith, exposed the new conception over two centuries ago. Everyone is ready to invest something (a resource he has) only if he gets more value from such an investment than what he has invested. Everyone tries to maximize the difference between the value of the investment and the return on that investment. The maxim "The less I get paid, the less work I do" is a socially disastrous form of such maximization. A special form of such maximization is the so-called *rent seeking* (rent seeking behavior). The term "rent-seeking" was introduced by Krueger (1974), but the fundamental theory had already been developed by Tullock (1967). Social loss through the use of resources to influence politically or administratively assigned privileged benefit, known as "rent seeking", is an idea proposed by Gordon Tullock (Hillman, Ursprung, 2015: 2).

According to Aidt (2016), the rent-seeking literature embodies two core ideas, which can be both found in Tullock (1967), but Aidt summed up the insights as follows:

1. The missiles seek heat hypothesis: A contestable rent induces rent-seeking activities aimed at capturing the rent. These activities involve unproductive use of real resources and cause a social loss.

2. The invertability hypothesis: Rent-seeking costs are, by and large, unobserved but, by applying contest theory and assumptions about the behaviour of rent seekers, the size of the social cost can be inferred from the value of the contestable rent (Aidt, 2016: 143).

2. What is Rent-seeking?

Widespread rent-seeking in many socio-economic systems of virtually all countries has caused increased academics attention to agents' rent-seeking behavior in different spheres of society (Latkov, 2014: 2). The existence of rent-seeking activities and losses are relevant interest areas for the study of policy making and public economics, and many other areas of social science. The rent-seeking approach is mainly based on social behaviorism, neoclassical economics, and the theories of public choice and rational choice. The idea of rent seeking is important for understanding a broad range of long-standing applied economic topics, encompassing regulation, international trade policy, economic development, the transition from socialism, and communal property.

It can be said that the academic rent-seeking literature is relatively new and emerged from papers published by Gordon Tullock, Anne Krueger, and Richard Posner in the course of some 10 years in the 1960s and 1970s. The idea that rent-seeking behavior has important social and economic costs is a relatively long-standing one in the economic and political

science literature. Rent seeking is often uses in analyses of politics (Tullock, 1967; Krueger, 1974; Posner, 1975; Bhagwati, 1982). Economists consider the problem a serious one. Rent seeking is increasingly becoming an important area of study in the field of economics. Rent seeking involves all forms of regulations and restrictions on economic activities by government and people, which may give rise to illegal rent activities that may take the form of black markets, bribery, corruption and smuggling (Krueger, 1974: 291).

Within the Virginia School of Political Economy, a whole series of studies on the effects of state intervention in the economy have emerged (Rowley, 2008: 10). The largest number of these studies is the reaction to a trend that could be observed in the period 1945-1957, when a large number of economists attacked the minimal state and advocated for state intervention, with the argument that the market creates market failures that can be repaired only by state intervention. The Virginians have come up with the term *rent-seeking*, one of the central concepts that points to the state failure. In addition, Virginia School achievements should include the "political economy of rent-seeking society" creation, integration of rent-seeking theory and property rights theory, the basic rent-seeking model developing, political agents' rent-seeking models creation in the political business cycle context (Latkov, 2014: 2). The significance of the concept of rent-seeking for a modern political economy and political science was far-reaching for at least two reasons (Pavlović, 2009: 185). First, the fact that search for rents is the characteristic of any political system has inspired empirical research worldwide. Secondly, the search for rents has once again confirmed some of the assumptions on which rational choice theory is based: methodological individualism and the modern political economy, which imply that individuals, especially politicians, are always guided by personal interests when applying for public service; therefore, the typical statements made by politicians, such as "Involvement in politics proves to be harmful for business. I was much better off when I was in a private business ", should be taken with reservation.

"The literature on rent seeking, developed by Krueger (1974) and Buchanan (1980) provides a view closely related to, but different from, the Leviathan government. Rent seeking is expenditure by competing interest groups in the form of lobbying and/or bribery, to acquire favorable treatment through public policies (e.g. regulation, tax/subsidy)" (Sato, 2003: 20). In line with Tullock, "the founder of this approach and one of the most persistent critics of the social state, J. Buchanan (1983) instrumentalized the notion of "rent-seeking" in order to incorporate it into his broader criticism of the Keynesian social state as one that failed both to regulate the economy for the benefit of the market and to withstand pressures from the electorate for more public spending and the fulfillment of social demands (Markantonatou, 2013: 6)

The mainstream literature on rent-seeking has argued that traditional economic theory is incomplete in its assessment of the net social losses from monopolies, tariffs, and subsidies. Rent seeking effectively grants monopoly power to the successful seeker. Classic rent seeking occurs when resources are used in order to capture a monopoly right instead of being put to a productive use. Mainstream models of rent-seeking and the basic idea are best demonstrated through the case of a monopoly depicted in Figure 1 (Deacon, Rode, 2015: 230).

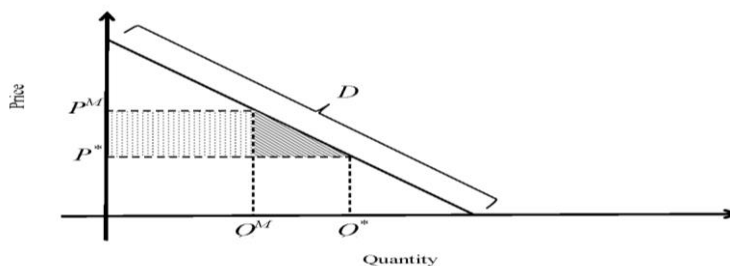

Fig. 1 Net Social Losses from a Monopoly
Source: Deacon, Rode, 2015: 230

As usual, the horizontal axis measures the sold quantity of a particular good, while the vertical axis measures the price of this good. Consider a given demand curve, D. Under perfect competition, Q* units of the good will be sold at price P*. However, if a monopoly were established, it would sell Q^M units of the good at price P^M. According to traditional economic theory, the net social loss (i.e. deadweight loss) from the monopoly is the area of the shaded triangle, often referred to as the Harberger triangle. This area represents the consumer surplus that would have been obtained from the purchase of those units between Q^M and Q*, which are neither purchased nor produced under the monopoly. On the other hand, the area of the dotted rectangle (i.e. monopoly rents) has been traditionally regarded as simply a transfer of surplus from consumers to the monopolist. As they are all members of the same society, there is no net social loss involved in this transfer (Deacon, Rode, 2015: 229).

When a state assigns a monopoly position for which there is a competition of interest, the social costs of the monopoly include not only the allocation loss (due to the monopoly behavior and the amount of opportunity costs of funds invested in rent seeking that they can even surpass the rent) but also the opportunity costs of the resources invested in the activities which were undertaken with the aim of defending their own position, i.e. protection of rent. It should be emphasized at this point that "rent-seeking is different, in the neoclassical jargon, from profit-seeking" (Gramc, 2007: 150). Rent seeking may be distinguished from profit seeking because the rent seeking operation creates "artificial scarcity" by the state and thus monopoly profits are available for capture. "Profit-seeking activities refer to taking advantage of market opportunities in order to increase one's profits, allowing one to produce a higher level of output for a given cost or the same level of output at a lower cost. The resources expended on rent-seeking, however, are said to be spent on attaining some artificially created transfer, such as a government-franchised monopoly position" (Gramc, 2007: 150). Unlike profit-seeking, rent-seeking does not create wealth; it merely transfers it from one party to another. As shown in Figure 2, the costs of the intentional monopoly sought via rent-seeking are both the deadweight costs and the entire amount of potential monopoly benefit spent by interest groups that compete for it (Tollison, Wagner, 1991: 60-61). The deadweight monopoly loss is represented by the Harberger triangle and rent-seeking is represented by the Tullock rectangle. Evidently, the "Tullock rectangle" must be added, in whole or in part, to the "Harberger triangle" when calculating the potential loss of welfare associated with monopoly (Tullock, 1993: 10).

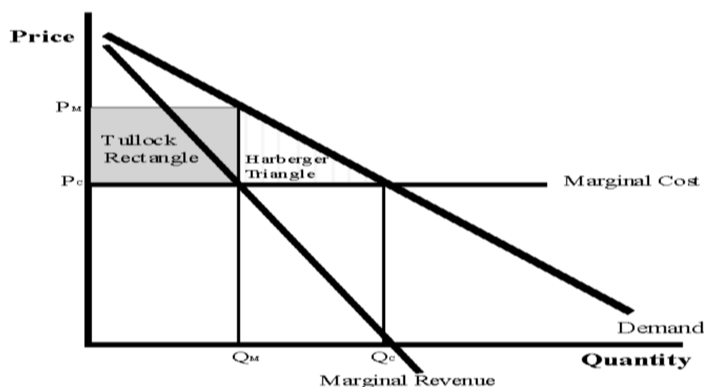

Fig. 2 Rent-seeking and Deadweight Social Losses
Source: Tullock, 1993: 10

According to its most common and widespread definition, rent-seeking (behavior) refers to "the socially costly pursuit of wealth transfers" (Tollison, 1997: 506). Rent-seeking is usually defined as "the political activity of individuals and groups who devote scarce resources to the pursuit of monopoly rights granted by governments" (Gramc, 2007: 147). Rent-seeking is also defined as "non-productive use of resources in the framework of contests to acquire "rents," i.e. existing wealth (in the form of money, privileges or status), instead of creating new wealth by means of productive activities, consistent with the competitive returns of the market" (Markantonatou, 2013: 3).

3. The Nature and General Considerations of Rent-Seeking

Using costly nonproductive activities to obtain economic rents is called rent-seeking. Rent seeking is a political economy concept. Rent-seeking is competition for privilege. Rent-seeking activities aim at securing private benefits through state activities. "Rent-seeking is both an agent-government phenomenon and an agent-agent phenomenon" (Gramc, 2007: 145). "Rather, rent-seeking is a demand-side as well as a supply-side phenomenon" (Gramc, 2007: 154). Rent-seeking creates inefficiency and destroys social surplus. Taking into account that individuals divert resources from other productive activities they could have been engaged in, rent-seeking is often considered inefficient and wasteful, and can result in corruption and the concentration of power and control in the few. "Rent-seeking activities are unambiguously Pareto inefficient and lead to the destruction of wealth. This aspect is in line with the view that rent-seeking is a negative-sum game" (Chaturvedi, 2017: 19).

Figure 3 shows the *net effect* of any rent-seeking process as compared to the conventional production process. "The net effect of any rent-seeking process depends both on the rent-seeking cost, which is equivalent to the cost of inputs used up in this process, and on the value of the rights and rents produced as the outcome, which is equivalent to the value of the "output" in this case. Unfortunately, much of the analysis of rent-seeking which has influenced policy-making has typically ignored differences in the value of the outcomes of rent-seeking and has concentrated exclusively on the rent-seeking cost. The conventional analysis of the rent-seeking cost has also been very simplistic, failing to address why the rent-seeking cost can vary significantly from case to case" (Khan, 2000: 72).

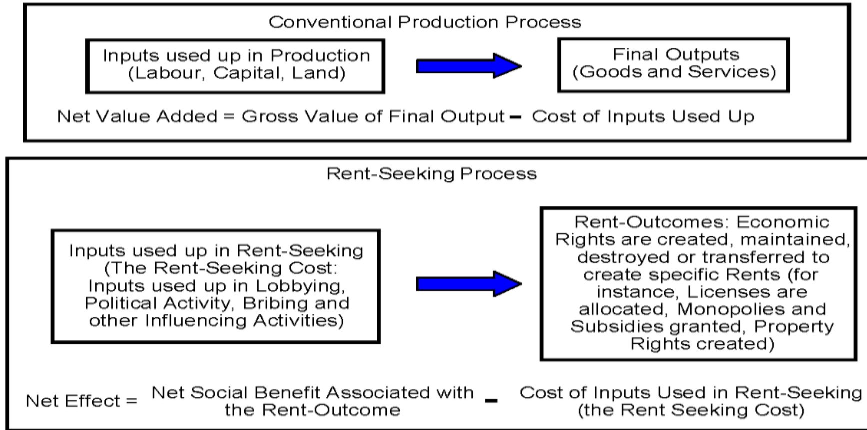

Fig. 3 Rent-Seeking Compared to a Conventional Production Process
Source: Khan, 2000: 73

Rent-seeking can occur in three basic fashions: direct, indirect, or rent-extraction (Zywicki, 2015: 16-18). *Direct rent-seeking* occurs when an interest group is provided with a benefit that directly benefits it, such as a tariff, regulated monopoly (such as a licensed profession), or subsidy, such as subsidies for particular agricultural commodities. *Indirect rent-seeking* occurs when a seemingly neutral regulation or law is enacted which actually implicitly favors some people over others. Both direct and indirect rent-seeking have a corollary effect, called rent-sharing. Finally, crony capitalism can also occur through *rent-extraction* by politicians. In this scheme, politicians threaten to impose harm or take away benefits currently held by various firms or industries, which those firms can avoid by paying tribute to the politician. In this situation, the firms lobby, not for gain but to avoid losses that are larger than their rivals. Thus, we may distinguish two kinds of rent-seeking in a market democracy: (1) market privilege rent-seeking, and (2) redistribution rent-seeking. The former grants special market privileges to some people while taking privileges away from others; ultimately, it reduces economic efficiency. The latter is aimed at redistribution of wealth; it does not interfere with free enterprise, although it affects incentives to produce wealth (Gunning, 2003: 348)[1].

Yet, rent seeking can take different forms, such as: *underwriting of the campaigns of legislators, bribery, lobbying, and even political violence*. As the most common form of rent-seeking, lobbying is a typical representative of the rent-seeking mechanism that attempts to articulate particular interests in the political process. Many large companies today in the more developed democracies employ resources to seek market privilege. The result is a huge lobbying industry which discourages competition or private innovation, distorts the economic market and discourages economic productivity. Hasen notes that "lobbyists threaten national economic welfare in two ways: (1) lobbyists facilitate rent-seeking activities which occurs when individuals or groups devote resources to capturing government transfers, rather than putting them to a productive use; (2) lobbyists tend to lobby for legislation that is itself an inefficient use of government resources" (Hasen, 2012: 191).

[1] See: Gunning, 2003: 347-350.

Corrupt rent-seeking reduces state revenues and leaves limited funds for public services such as health, education and infrastructure (Shleifer, Vishny, 1993; Tanzi, Davoodi, 1997). In countries with poorly developed institutions, rent-seeking may impose serious costs for the economy. According to Kjetil and Kjetil (2005: 1), "rent-seeking distorts the economy through two channels. First, there is the direct cost of the resources wasted in the rent-seeking contest. Second, rent-seeking distorts companies' investment decisions, and leads to underinvestment." Whatever the social cost of rent-seeking through time and other resources used in rent-seeking, the excess burden of taxation is greater because of rent-seeking. The excess burden of taxation is associated with the Harberger triangle (Kahana, Klunover, 2014: 4-5).

4. Rent-seeking - Practical Experiences, Cases and Policy Implication

Rent-seeking has, nonetheless, led to a political culture of "money politics" with negative repercussions on the political development of the country. Rent-seeking imposes significant costs on the economies of many countries and results in reduced economic efficiency through poor allocation of resources and lost government revenue.

Rent-seeking is constantly growing and "generally speaking, social wastage due to rent-seeking behaviour ranges between 3 and 50% of GDP" (Miler, 2008: 327). Although rent-seeking and corruption in financial markets might be more contained in developed economies under normal circumstances, extreme events, such as the recent financial crisis, may create more powerful incentives to influence policy through political connections and other related mechanisms. Indeed, there is growing evidence of such behavior in the most recent U.S. financial crisis. "Once the impact of rent-seeking in financial markets is properly isolated, the next question one must address is its economic magnitude" (Khwaja, Mian, 2011: 591). Khwaja and Mian (2005) show that government banks annually lose 17.9 billion rupees due to higher default rates on political loans. The distributive cost of these bank losses is equivalent to the deadweight loss associated with higher taxation. Empirical estimates of deadweight loss from taxation in the public finance literature suggest that the deadweight loss ranges from 40% to 100%. Using the lower end of this distribution, they conservatively estimate the distributive cost of politically motivated lending to be 0.16% of GDP per year. Otahal (2011) developed a rent-seeking model of the establishment of a central bank controlled by the government. He assumes that the first goal of the central bank is to maximize non-interest-bearing debt held by public. Non-interest-bearing debt held by public is the revenue generated from printing fiat money. Then, he assumes that the second goal of the central bank is to maximize its own power. Naturally, the central bank might seek additional goals; for instance, it could create a political business cycle. Nevertheless, in the case of Federal Reserve System, the former two goals played a crucial role in the process of its establishment. Rent-seeking is the main mechanism that induces inequality traps. The two feed back into each other, creating a cycle of endemic inequality - an inequality trap induced by rent-seeking. Evidence for the backward link between rent-seeking and inequality is also wide. The economist Joseph Stiglitz (2012) has argued that rent-seeking contributes significantly to income inequality in the United States through lobbying for government policies that let the wealthy and powerful get income, not as a reward for creating wealth but by grabbing a larger share of the wealth that would otherwise have been produced without their effort. Piketty, Saez and Stantcheva (2011) have analyzed international economies and their changes in tax rates to conclude that much of income inequality is a result of rent-seeking among wealthy tax payers.

Problems associated with rent-seeking are relevant especially for China, India, Brazil, Mexico, Russia, etc. These countries are still not among the economically advanced states, and a number of researchers noted that there is "a vicious circle of inefficient economic systems" for "developing countries" category (Latkov, 2014: 2). Qian (2012) illustrated the limits of economic privatization without political reform in China. There is government's dilemma between strategic interests and self-preservation through maintaining state control, versus increasing SOE competitiveness through privatization. The real sector is open to both foreign trade and foreign investment. However, domestic business activities are heavily regulated, giving rise to rent-seeking behavior. Rent is created through the government ownership of land and licensing controls on business activities. Rent-seeking is accompanied by high entry barriers, which suppress domestic entrepreneurship. The problem of rent-seeking in China's state-owned enterprises has worsened since the rapid increase in infrastructure investment, such as telecom and railway (Quian, 2012: 60-67).

In democracies such as the U.S., rent-seeking seems to be involved in various public-policy decisions, such as policy responsiveness to environmental externalities, the incidence of taxation, budgetary allocation, and international trade policies (Hillman, Ursprung, 2015: 21). In his well-known book *The Rise and Decline of Nations: Economic Growth, Stagflation, and Social Rigidities* (1982), Mancur Olson identified the dire state of the American economy and diagnosed its ills as resulting from rent-seeking by important corporations and interest groups that had stifled innovation and thrown a blanket of stasis over the economy. Amounts of funds allocated for lobbying purposes can be characterized as fabulous. Estimates suggest that there were 11,800 registered lobbyists in the United States in 2014, and that $ 3240 million was spent on lobbying. Among the industries that invested most funds are pharmaceuticals ($ 230 million), business associations ($ 164 million), insurance industry ($ 151 million), and so on[2].

Social waste from the rent-seeking of lobbyists has also been substantial. The USA has the longest tradition in lobbying regulation, both on the state and federal level. Moreover, lobbying is well-founded in the right to petition, as outlined in the First Amendment to the US Constitution. The US lobbying style is considered to be more violent, dynamic, aggressive and short-term focused (Krsmanović, 2013: 26). Hence, "considering the direct and indirect costs of rent-seeking legislation together, rent-seeking legislation could be undermining the health of the overall U.S. economy, threatening the economic position of the United States compared to other world powers" (Hasen, 2012: 231). Hansen notes that „Minimizing rent-seeking therefore may be a necessary component of an effort to improve U.S. economic productivity, long-term economic growth and decrease the deficit" (Hasen, 2012: 232). Given the economic costs of the rent-seeking facilitated by lobbying activities, it is surprising that there has been so little focus on whether lobbying regulation might improve the U.S.'s financial situation. Figure 4 indicates that lobbying has been an important part of US political life in the last decade, but it has played this role for a much longer time in America (Krsmanović, 2014: 49).

The EU is the second biggest lobbying arena in the world where lobbying is not only corporate, but often also has institutional origins. Besides trade unions and corporations, numerous regions and cities often engage in lobbying and fight for fund distribution (Krsmanović, 2013: 29). In 2013, the EU financial industry (commercial banks, insurance

[2] See: Open Secrets-Center for Responsive Politics, Report 2014;
https://www.opensecrets.org/about/reports.php

companies, etc.) hired 1700 financial industry lobbyists and spent $ 123 million at different stages and levels of the EU legislative process (Wolf, Haar, Hoedeman, 2014: 15)[3]. The biggest banks and insurance companies are interlinked in multiple ways with EU decision making (Table 1).

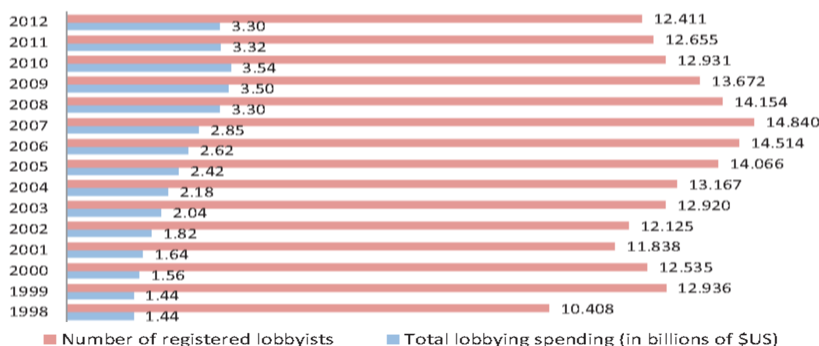

Fig. 4. Overview on lobbying spending and lobbying numbers in US
Source: Krsmanović, 2014: 49

Table 1 The five most active lobbying organisations of the financial industry

Lobbying organisation	Consultation Responses (Commission)	Expert Groups (Commission)	Lobby Meetings (European Parliament) +Intergroups	Consultation Responses (European Parliament)	Supervisory Agencies' Stakeholder Groups	Expenses per year on lobbying (€)
1. European Banking Federation	15	12	13	2	2	4,375,000
2. European Savings Bank Group	14	7	9	2	1	275,000
3. European Fund and Asset Management Association	12	7	7	2	2	1,875,000
4. Association for Financial Markets in Europe	12	7	13	2	2	10,000,000
5. European Association of Cooperative Banks (EACB)	11	8	2	2	0	225,000

Source: Wolf, Haar, Hoedeman, 2014: 18

In 2005, the most favoured political channel and target was to lobby the Commission (EC) directly, with about a quarter of the significance of all political activity attributed to

[3] For more, see: Wolf, Haar, Hoedeman, 2014: 13-15.

this (Figure 5). This shows that EU institutions (especially the Commission) suffer from general lack of administrative capacity and political legitimacy, which are both compensated through interaction with interest representatives (Krsmanović, 2013: 13).[4]

Fig. 5 Allocation of Business Political Resources 2005.
Source: Coen, 2009: 151

Coen notes that "regardless of treaty changes and the slowing legislative outputs of the EU, the European Commission is the primary focus of lobbying activity in Brussels both directly and/or via trade associations" (Coen, 2009: 151). The decrease in the rule of law and in control of corruption in several EU countries is a threat to the cohesion in the EU, and Brexit has reinforced the centrifugal forces in the EU (Ritzen, Haas, 2016: 2). Hence, "we can conclude that lobbying has a dual economic nature. On the one hand, it reduces costs of the public sector (by reducing the asymmetry of information and transaction costs) but, at the same time, it creates higher costs for the private sector via lobbying expenditures that are especially high in a competitive surrounding" (Krsmanović, 2013: 20)

Recently, "we have seen how rent-seeking behavior by interest groups can impede important structural reforms in countries that need to modernize their economies and make them more competitive" (Patnaik, 2015: 3). "The rent-seeking approach was the starting point for discourses linking the crisis with factors fundamentally inherent in the Greek economy and societ (Markantonatou, 2013: 2). Ott (2011) also labels the Greek economy as rent-seeking, thereby distancing himself from Habermas's understanding of solidarity with Greece, that would an understanding turn the EU into a "transfer union". He further believes that the loans to Greece perpetuate the country's rent-seeking role and the very causes that led to the crisis, including high public debt, an inefficient public sector, and corruption" (Markantonatou, 2013: 5). "The onset of the Greek Great Depression put the tombstone on this view, as it revealed that the semblance of "Europeanization" of the institutional and policy infrastructure masked the existence of deeply embedded, clientelistic networks that supported the country's "democratization" of rent-seeking" (Moutos, Pechlivanos, 2015: 38).

In Serbia, the theory of rent-seeking allows the privatization process to be interpreted as the result of interactions of interest groups with opposite objectives, which leads to a socially suboptimal result. Inequality in the results of various privatizations is explained by the interaction of groups of opposing interests: on the one hand, there is a resistance to

[4] For more on the institutional context of lobbying in the EU, see: Krsmanović, 2013: 29-35

privatization, provided by managers and workers of inefficient state-owned enterprises; on the other hand, there are representatives of the new management class who are committed to strengthening their own control over the means of life. This competition led to a well-known negative selection in which non-profit enterprises remain state-owned, while profitable enterprises become part of a private oligopoly. Rent-seeking preferences and corruption are serious limitations of economic policy in Serbia, and "the economic policymakers have still not presented major institutional solutions that would reduce systemic corruption and prevent rent-seeking activities (Praščević, 2013: 10). "Rent seeking activities in Serbia were aimed at generating some form of monopoly or special position for certain economic agents, but also for certain political parties that would enable them to obtain financial and political benefits they would not otherwise have had"(Praščević, 2013: 13).

How to reduce the negative effects of rent-seeking? According to Patnaik (2015), there are two ways:

"1) it would be essential for policy makers to take the costs of rent-seeking more explicitly into consideration when designing policies. Different policy alternatives should therefore also be evaluated, based on (1) their potential vulnerability to rent-seeking, (2) the direct costs incurred by groups seeking to influence those policies, and (3) the expected welfare losses if some of the rent-seeking were to be successful, which would result in a more comprehensive evaluation of the actual costs of certain policies;

2) it would be imperative to introduce much greater transparency into any interactions between firms and political/government actors" (Patnaik, 2015: 4).

5. Conclusion

The published research on rent-seeking is large and getting larger. The topic of rent-seeking is very interesting from the view of academics and practitioners alike. Rent-seeking is undesirable because it is wasteful. The social price of seeking for and withdrawing a rent is high. For this reason, this phenomenon is socially unacceptable and it should be prevented as much as possible. On the one hand, given the very nature of rent-seeking, it is unreasonable to expect that the entire society would become a rent-seeking society because such a search exists as long as there is a redistribution base. The basis for the payment of some form of state aid to those who seek to get it will exist as long as there are individuals who are still willing to pay taxes. On the other hand, having in mind that there are many actors who lobby for introducing "defective" laws for their own benefits, it is not justifiable to expect that society would be fully purified from those striving to appropriate something that has been created by another.

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ANATOMIJA I POSLEDICE TRAGANJA ZA RENTOM

Ekonomski razvoj i uspeh ekonomske politike kroz koje se ostvaruju razvojni ciljevi može se tumačiti kao produkt političke interakcije između građana i vladara i društvenih interakcija između članova društva u širem smislu. Kao strukture i mehanizmi društvenog poretka, institucije upravljaju ponašanjem grupe pojedinaca u datoj zajednici. Institucije utiču na odgovornost i responzivnost zvaničnika ka građanima i interesnim grupama i na taj način određuju veličinu kreiranih renti. Pored toga institucije utiču na stepen političke kontrole javnih birokrata i, dakle, na distribuciju renti unutar javne sfere. Primarni cilj ovog rada jeste da prikaže koncept traganja za rentom (rent-seeking) i da, na empirijskom slučaju, pokaže kako do njega dolazi i kakve su posledice.

Ključne reči: *traganje za rentom (rent-seeking), interesne grupe, rasipanje resursa, lobiranje.*

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Review Paper

EUGENICS

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Abstract. *Eugenics is a pseudoscience aimed at improving and controlling the genetic structure of the human species by selective breeding, which implies preventing inferior people from having children (negative eugenics) and encouraging superior ones to reproduce (positive eugenics). The Eugenics movement originated in the early 19th century and it was largely developed under the influence of Francis Galton in the United Kingdom and Charles Davenport in the United States. These two scientists advocated the selective breeding of desirable traits and reproductive control of undesirable traits in the human race. Racially-oriented eugenics had a dramatic expansion and its peak in Nazi Germany. Being the essence of many racial laws, eugenics was atrociously applied in practice by means of mass euthanasia, mass sterilization, extermination in gas chambers, and horrible experiments on people of lower races or those unworthy of living.*

Key words: *eugenics, positive eugenics, negative eugenics, Nacism.*

INTRODUCTION

Eugenics is the study of or belief in the possibility of improving the qualities of the human species or human population, especially by such means as discouraging reproduction by persons having genetic defects or presumed to have inheritable undesirable traits (negative eugenics) or encouraging reproduction by persons presumed to have inheritable desirable traits (positive eugenics).[1] The notion was derived from two Greek words (*ey* and *genos*), which literally mean good genes.[2]

The development of eugenics into a movement was preceded by a study of the world of flora and fauna, which later led to the conclusion that the achievements in the selection and crossbreeding of the best specimens of plant and animal species with the aim of improving them, are applicable to the human race as well.

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[1] Dictionary.com: *Eugenics,* https://www.dictionary.com/browse/eugenics, accessed 16.05.2018.

[2] Велики Речник мање познатих речи и израза: Еугеника (Dictionary of foreign words and phrases: Eugenics); https://velikirecnik.com/2016/04/01/eugenika/, accessed 16.05.2018.

The development of eugenics into a movement was preceded by a study of the world of flora and fauna, which later led to the conclusion that the achievements in the selection and crossbreeding of the best specimens of plant and animal species with the aim of improving them, are applicable to the human race as well.

In the first half of the 19th century, England became the most advanced capitalist country with a highly developed industry and agriculture. Small estates were liquidated and the land was taken over by large landowners who had both time and money to raise new breeds of hunting dogs and horses, which was highly beneficial for sports of this kind. New sorts of plants (vegetables, fruits, decorative plants, etc.) were developed through selection and crossbreeding. Moreover, in search of new markets for raw materials and manufactured products, England sent expeditions to various countries which were its commercial and military targets. Scientists, who took part in these expeditions, gathered specimens and brought plenty of descriptions of newly discovered species for museum collections. The success of biological sciences was huge at the time. As the organism began to be studied as a unique system of the external and internal features, scientists came to the conclusion that there are systemic groups of organisms in nature which must sustain the natural systems. It was also proven that all organisms develop from cells. Paleontology, the science dealing with extinct species, provided a diversity of facts that testify about the unity of the origin of plants, animals and human beings. All these scientific discoveries provided a firm ground for the emergence of Charles Darwin's evolutionary theory on the origin of species. It was Darwin who examined all these elements and devised a harmonious system (Pešić, 2016: 29- 30).

Darwin consolidated the historical interpretation of the living nature and successfully resolved the issue of diversity of species and organic purposefulness, as inevitable consequences of natural selection and divergence of traits. At his point, it should be noted that Darwin's book *On the Origin of Species* was only about animals and plants in a biological community, while the study and development of man was left aside. Although Darwin did not explore the development of man, the very title of this book inevitably raises the question of preserving better human races in the universal struggle for survival (Pešić, 2016: 32). Darwin established that man raised new breeds and sorts of plants and animals through artificial selection. The essence of artificial selection is that only those animals and plants which manifest interesting and beneficial changes are left for breeding. As this is done in every subsequent generation, the desirable traits accumulate and amplify (Pešić, 2016: 33).

All new theories subsequently developed in that period, which gravitated around Darwin's main ideas, may be subsumed under the conceptual fremework of *Social Darwinism*. At first, this conceptual framework was used by the supporters of Social Darwinism to criticize Darwin's evolutionist standpoint but, in the course of its development, this concept gained a different connotation. Thus, Social Darwinism aimed to bring together different types of utilitarian and other viewpoints on the origin of species by advocating a single idea: in the same way as animals and plants, human beings struggle to survive and participate in the survival competition where natural selection results in the survival of the fittest, the most capable and the the most adaptable ones (Pešić, 2016: 33).

THE EARLY BEGINNINGS OF EUGENICS

The Eugenics movement originated in the early 19th century and it was largely developed under the influence of Francis Galton in the United Kingdom and Charles Davenport in the United States. Eugenics gained popularity throughout the late 19th and early 20th century, as some scientists incorrectly believed that many human behaviors, like alcoholism or social dependency, were solely the product of genes, independent of environmental influences.[3]

Race-oriented eugenics had a dramatic expansion and its peak in Nazi Germany. Being the essence of many racial laws, eugenics was atrociously applied in practice by means of mass euthanasia of *the less worthy*, mass sterilization, extermination in gas chambers, and horrible experiments on people of *the lower races*. In this paper, we will discuss the eugenic practices in the US and Nazi Germany, although eugenics was widespread in other parts of the world as well.

The first fundamental presentation of Eugenics was the book *Hereditary Genius* by Frances Galton (1869), in which he suggested that a system of arranged marriages between prominent men and wealthy women would ultimately bring forth the race of the gifted. Galton's theories were supported by the *American Eugenic Society*, founded in 1926. American eugenicists also supported the restriction of immigration from the low-income countries, such as Italy, Greece and other countries of Eastern Europe, and advocated the sterilization of the feeble-minded, mentally ill, retarded and epileptics. Sterilization laws were passed in more than half of the states, and isolated cases of violent sterilization continued into the 1970s. The Eugenics was strongly criticized in the 1930s and discredited only after the Nazi Germany used eugenics as an alibi for the extermination of Jews, black people and homosexuals (Mišić, 2005: 61).

EUGENICS IN THE USA

In the United States, biologist Charles Devenport (1866-1944) published a book titled *Heredity in Relation to Eugenics* in 1911. The book was so successful that even the President of the United States, Theodore Roosevelt, stated (in 1914): *I wish very much that the wrong people could be prevented entirely from breeding; and when the evil nature of these people is sufficiently flagrant, this should be done. Criminals should be sterilized and feeble-minded persons forbidden to leave offspring behind them… The emphasis should be laid on getting desirable people to breed.*[4]

The first Eugenics law was passed in 1907 in Indiana. Eugenic-based immigrant tests were devised, according to which 80% of immigrants from Eastern Europe (Poles, Jews, Russians) were classified as feeble-minded. This resulted in passing a new law in 1924, which restricted immigration from Eastern Europe on the basis of genetic inferiority. The law was in force until 1965. By the end of 1930, most US states had legislation on sterilization for *mentally ill, drunkards, epileptics, and degenerates*. In 1935 alone, about

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[3] See: Helix Magazine-Modern Eugenics: Building a Better Person?, https://helix.northwestern.edu/article/modern-eugenics-building-better-person, accessed 20.05.2018.

[4] See: ABC News: Eugenics, power and prejudice: Why America had a Nazi problem before Charlottesville, by Natasha Mitchell, published 8 Sept. 2017, http://www.abc.net.au/news/2017-09-08/eugenics-history-us-had-nazi-problem-before-charlottesville/8883074, accessed 20.05.2018.

22,000 sterilizations were carried out, with or without the consent of sterilized people. Devenport had a major impact on this issue in the United States.[5]

The 20th century American criminology contains a powerful thread of what Nicole Rafter called the *eugenic criminology*, which *gave the US a doubtful distinction* that it was not among the first countries in the world to start sterilizing criminals, the practice which started in 1907 and continued until 1945 (Kostić, 2012: 187).

In the early 20th century, physicians, legislators and social reformers throughout the United States supported the program of an increasing number of Eugenics movements that joined forces to try to legalize the sterilization of certain groups of people. Such regulations were motivated by cruel theories on the heredity of certain states and traits, and even criminal predisposition and sexual deviations. Many sterilization advocates felt that it was necessary to introduce a reproductive policy that would deprive the *unfit* persons of the right to procreate, so that the society would be protected from their harmful genes. In the period between 1907 and 1937, as many as 32 US states passed sterilization laws that prohibited the procreation to those who were considered unfit. The largest number of people were sterilized in the late 1930s and early 1940s, and it was not before the early 1970s that state legislatures began to re-examine and repeal such laws. A study conducted by experts at the University of Michigan, which included the analysis of 19,995 health care cards of the sterilized patients, revealed that a vast majority of them were young women proclaimed promiscuous, sons and daughters of Mexican, Italian and Japanese immigrants, as well as men and women who did not fit into sexual norms, or persons whose sexual orientation and gender identity were different from the generally accepted social perception of gender roles, and thus regarded as inherently perversive. Preliminary statistical analysis indicates that in the peak of these operations (from 1935 to 1944), patients with Spanish surnames were 3.5 times more likely to be sterilized that others.[6]

One of the most famous cases of eugenic sterilization was the *Buck v. Bell* case, which involved a poor mentally impaired young girl. After the Virginia Court of Appeal upheld the trial court decision to subject Carrie Buck to sterilization or to return her to the mental institution, the case reached the US Supreme Court in 1927. As both her grandmother and mother were found to be feeble-minded, Judge Oliver Wendell Holmes ordered sterilization, saying that "*Three generations of imbeciles were enough"*.[7] Although the sterilization law was repealed in 1979, sterilization of inmates was allowed until recently under a strict set of criteria. Yet, in the period between 2006 and 2010, a total of 146 female inmates in two Californian prisons were sterilized without meeting those criteria; in at least thirty of these cases, the unauthorized procedures directly violated the state legislation on informed consent. Most of the sterilized women were first-time offenders of African-American and Latin-American descent, and the doctor in charge of these operations said that this procedure saved a lot of money as compared to the welfare that the state would have to pay for care of unwanted children if these women kept breeding. The story about

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[5] See: In medias res: *Eugenika* (Eugenics) by Vojin Petrovic; http://www.medias.rs/eugenika, accessed 21.05.2018.

[6] Huffington Post: That Time the United States Sterilized 60,000 of Its Citizens, by Prof. Alexandra Minna Stern,University of Michigan; published 01/07/2016, https://www.huffingtonpost.com/entry/sterilization-united-states_us_568f35f2e4b0c8beacf68713, accessed 20.05.2018.

[7] See: Facing History and Ourselves: The Supreme Court and the Sterilization of Carrie Buck, https://www.facinghistory.org/resource-library/supreme-court-and-sterilization-carrie-buck, accessed 21.05.2018.

these cases was reported by a journalist at the Center for Investigative Journalism in 2013, which ultimately led to passing a ban on sterilization in California prisons.[8]

NACISM AND EUGENICS

Certainly the most dreadful and consistent use of Eugenics took place in Nazi Germany, where eugenic practices paved the way for the most monstrous crimes ever remembered in the history of human civilization. These monstrocities and victims' cries will resound in the human consciousness for many more years, thus setting a categorical imperative for all people in power, rulers, lawmakers, scientists and lawyers that such an Armageddon committed by humans shall never be repeated. However, it is also imperative to make a clear distinction between Nazi Germany and the present-day Germany, in order to avoid discriminatory treatment of the latter.

In 1904, anthropologist Dr. Alfred Ploetz founded the *Archive for Racial and Social Biology*, and a year later, he established the *Society for Racial Hygiene*. He formulated the goal of his pseudo-scientific research as follows: "*As a dog protects itself from fleas or the flesh protects from the flies, so our race must be protected against harmful heritage and the influence of foreign blood*." The book *Human Heredity and Racial Hygiene*, written by E. Baur, E. Fischer and F. Lenz in 1921, was a standard textbook on racism in the period before the publication of Hitler's book *Mein Kampf* (My Struggle) in 1925 (Đurić, Miletić, 2008: 33).

In her work on criminal biology in Nazi Germany, American criminologist Nicole Rafter links her study of eugenics to the period of the Third Reich in Germany from 1933-1945.[9] She cites the leader in Nazi eugenics research, Dr. Eugen Fischer, who said: "*It is a rare and special good fortune for a theoretical science to flourish at a time when the prevailing ideology welcomes it, and its findings can immediately serve the policy of the state*." (Rafter, 2008: 293). Hence, two scientific programs developed within the framework of the Nazi criminal biology: eugenics and racial hygiene. These terms are often used as synonyms. The Eugenic project aimed to improve the quality of the human race, by encouraging superior people to reproduce (*positive eugenics*), and discouraging the inferior ones from procreating (*negative eugenics*), by means of forced exile, ban on marriages, imprisonment or elimination. In general, eugenics was aimed at preventing the genetic reproduction of all people with hereditary defects, for the benefit of the society as a whole. Rafter also notes that "*into the 1930s, Jews were among those who, in Germany and elsewhere, supported the eugenics movement, which, criminologically, aimed at identifying hereditary criminals of all races and ethnicities and preventing them from reproducing*" (Rafter, 2008: 293). On the other hand, the racial hygiene project was aimed at identifying the ethic and racial group of people, such as Jews or Roma, in favor of restoring the purity of the Germanic Aryan race. From the standpoint of criminology,

[8] See: Huffington Post: That Time the United States Sterilized 60,000 of Its Citizens, published 01/07/2016, https://www.huffingtonpost.com/entry/sterilization-united-states_us_568f35f2e4b0c8beacf68713, accessed 20.05.2018.

[9] See: Rafter, Nicole (2008), Criminology's Darkest Hour: Biocriminology in Nazi Germany, The Australian and New Zealand Journal of Criminology, Vol.41, No. 2, 2008, pp. 287–306; http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.876.4474&rep=rep1&type=pdf, accessed 21.05.2018.

racial hygiene overlaps with eugenics in the part where specific racial and ethnic groups were identified as having genetically criminal predispositions (Kostić, 2012: 187-188).

Eugenics was definitely thriving in Nazi Germany. From the very beginning, anti-Semitism was a very prominent concept of Nazism, both as a political program and an ideology. Anti-Semitic political slogans were very sharply introduced as early as in the 1923 coup, which Hitler attempted with several of his associates in Munich but failed at the time. Later, while he was in prison, Hitler wrote his book *Mein Kampf*, which became a sort of the Bible of the Nazi movement. There, he openly and extensively elaborated on the concept of the harmfulness of Judaism, its negative aspects, its racial inferiority and, in principle, already outlined a series of measures he thought should be taken against Judaism when, one day, he would come to power (Weiss, 2013: 143).

Hitler's concept of Nazism coincided with certain needs and endeavours of some social strata in Germany at that time, which developed in two directions. On the one hand, Germany in those years, especially in the 1920s, was faced with a severe social crisis: a lost war, reparations, territorial restrictions, arms control. Germans, who until 1918 believed that they would become the leading nation, could hardly bear it, particularly the most affected circles (one part of the nobility, the officers' corps, the declared imperial authority, etc.) but also the petty German bourgeoisie, which lost its savings and money owing to inflation crises (Weiss, 2013: 146). On the other hand, the concept of the *less worthy* (inferior) race, which first referred to the Jews and later included other nations (especially the Slavs) and ethic groups (such as Roma), was in fact politically a very tempting, practical and acceptable concept which consequently gave rise to the following conclusion: if the Jews were *less worthy*, then they should be removed from all positions and replaced by the *superior* race. The idea that the Slavs were *less worthy* was practically justification of a century-old German dream, historically embodied in the concept of *Drang nach Osten* (expansion to the East). These were the real roots of Nazi ideology, which operated under the slogan *Blut und Boden* (Blood and Soil). On the one hand, it implied the spirit of undefiled Germanic blood of the noble Aryan race and, on the other hand, its connection with the soil and the exclusive rule not only over the soil it governed then but also over the soil needed to sufficiently expand the living space (*Lebensraum)* (Weiss, 2013: 147).

To this effect, the Nazi campaign made use of propaganda, education, research, publications, films, bans and taboos in all social and cultural domains within the Third Reich and throughout Europe. The Nazis resorted to drastic measures of deleting, removing and altering the religious texts and opera librettos which were even slightly *tainted* and *defiled* by Judaism, renaming of the streets bearing the names of Jews, prohibiting the music and literary works of Jewish artists and writers, destroying Jewish monuments and libraries, eradicating the Jewish cultural heritage and *Jewish science,* burning books and human beings (Friedlander, 2013: 17).

Under the impact of racist teaching, some scientists considered that the ethic Roma and Sinti groups[10] living in Germany and Austria were a real threat to the purity of the Aryan blood of the German race. The most prominent figures among them were the German anthropologist Dr. Heinrich Wilhelm Kranz, director of the *Institute of Anthropology, Human Heredity and Eugenics* in Giessen, and Dr. Robert Ritter, a psychiatrist from Tubingen. Kranz believed that Roma people were “free agents” prone to vagrancy; thus, in order to protect the German race and preclude the social and racial danger of their

[10]Sinti, a Roma community group whose members live mainly in Germany and Austria.

procreation, Roma men were to be separated from the women and deported to concentration camps. Among the so-called scientists of Nazi Germany, Ritter was one of the main leaders and organizers of the destruction of Roma and Sinti. In November 1936, he was appointed Head of the *Racial Hygiene and Demographic Biology Research Department* of the German Reich Ministry of Health in Berlin, known as the *Institute for Racial Hygiene.* The main task of the Institute was to register all Roma and Sinti in Germany, perform data processing based on race criteria and conduct the so-called selection. Ritter and his closest associates aimed at proving that the Roma and Sinti, although they came from India, were no longer the Aryans, as they lost their racial purity by mixing with non-Aryans and other asocial groups. Their task was, therefore, to prepare and justify the *Final Solution* of the Roma and Sinti, which Himmler announced first on December 8, 1938, in the *Circular Combatting the Gypsy Nuisance* (Đurić, Miletić, 2008: 34).

The Nuremberg laws represent the realization of a racist concept at the legislative level. The laws based explicitly on racial theory were passed for the first time in 1935-1936, mainly including two sets of laws: the Citizenship Law, and the Law on the Protection of German Blood (Weiss, 2013: 154).

The essence of the Nuremberg Citizenship Law is based on the fact that there were two types of citizens in Nazi Germany. The first category included the people of pure *Ayrian blood*, who were the citizens of the Reich (German nationals) and thus the bearers of all rights. The second category of citizens included the "subjects" of the state, who were obliged to be completely loyal, obedient and submissive to the state, and to pay all their dues, but they were deprived of civil and political rights: they had no right to vote or participate in any kind of public life, public services, and the like. In Germany of that time, the law basically applied only to the Jews and served as an instrument for their anti-semitic persecution (Weiss, 2013: 155).

The Law on the Protection of German Blood further reinforced the racist ideaology. It strictly prohibited marriages between *the Aryans* and *the non-Aryans,* and imposed rigorous penalties for sexual intercourse between *the Aryans* and *the non-Aryans*, including death penalty in some cases. Under this law, only people with four German-born grandparents (two grandfathers and two grandmothers) were full-blooded *Aryans*. A *non-Aryan* was any person who had at least three grandparents of non-Aryan blood. Hence, as stated in Hitler's definition, those who had four or three Jewish grandparents were regarded as full-blooded Jews. The main goal of this law was to draw a sharp racial line (Weiss, 2013: 155).

The most monstruous chapters of the Second World War and the Holocaust are various medical experiments on *non-Arians*. In the Third Reich, eugenics gained the status of a legitimate science, which was organized and carried out by the state. In concentration camps, brutal experiments were carried out on prisoners, without any ethic and common sense, by doctors and scientists who willingly agrreed to do so. A number of SS physicians who performed such experiments in concentration camps, including *Auschwitz,* went down in history as notorious medical criminals. [11]

In *Auschwitz*, Prof. dr. Carl Clauberg experimented with mass sterilization on several hundred Jewish women from different countries. He developed a system of non-surgical mass sterilization which entailed injecting certain chemicals into the subjects, which resulted in female infertility and death; some of them were killed so that an autopsy could

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[11] For more, see: Jewish Virtual Library, https://www.jewishvirtuallibrary.org/nazi-medical-experimentation-at-auschwitz-birkenau (Source: The State Museum of Auschwitz-Birkenau), accessed 01.06.2018.

be made on the corpses, in order to acquire relevant knowledge that would ensure the success of experiments.

Like Clauberg, Horst Schumann conducted experiments on mass sterilization at *Birkenau.* Schumann used X-ray sterilization, exposing the ovaries and testicles of the victim to radiation, which resulted in severe burns and eventual deaths of most of the treated prisoners. In his report to Himmler in 1944, discontent with the X-ray experimentation results, Schumann gave preference to surgical castration, as a quicker method that produced more reliable results.

The notorious Dr. Joseph Mengele was also involved in eugenics experiments, working in collaboration with the *Kaiser Wilhelm Institute for Anthropology, Genetics, and Eugenics.* He was particularly interested in the phenomenon of twins and dwarfism. His first subjects were Gypsy children who served as guinea pigs for experimental treatment and further scientific examinations. After being subjected to starvation and agonizing experiements *in vivo*, the treated twins and people with disabilities were killed by phenol injections so that Mengele could proceed with the comparative analysis of the internal organs at autopsy.

In 1942, SS-Hauptsturmführer Prof. Dr. August Hirt, the Chairman of the Anatomy Department at the Reich University in Strassburg, received Himmler's permission to select the required number of prisoners from Auschwitz for his pseudo-scientific anthropological research on Jewish skeletons. A total of 115 prisoners (79 Jewish men, 30 Jewish women, 2 Poles, and 4 Asians) were selected, quarantined and killed in gas chambers at the *Natzweiler-Struthof Concentration Camp*. The corpses became part of Hirt's skeletons collection and his anthropological studies aimed at proving the superiority of the Nordic race.[12]

CONCLUSION

In spite of the fact that the century we live in represents the Renaissance and the Golden Age of Human Rights, as well as the age of the highest human enlightenment, the presence of transformed and latent eugenics in the form of modern eugenics remains undeniable. No matter how contradictory or controversial this may seem, developments in medical and genetic technology have generated a new form of eugenics, generally known as human genetic engineering, which has potential benefits as well as drawbacks.

Although the term *eugenics* has been abandoned, "eugenic ideas remain prevalent in many issues surrounding human reproduction. Medical genetics (a post-World War II medical specialty) encompasses a wide range of health concerns, from genetic screening and counseling to fetal gene manipulation and the treatment of adults suffering from hereditary disorders. (…) Furthermore, it is now possible to diagnose certain genetic defects in the unborn. Many couples choose to terminate a pregnancy that involves a genetically disabled offspring. These developments have reinforced the eugenic aim of identifying and eliminating undesirable genetic material. (…) Direct manipulation of harmful genes is also being studied. If perfected, it could obviate eugenic arguments for restricting reproduction among those who carry harmful genes. Such conflicting

[12] See: Jewish Virtual Library, https://www.jewishvirtuallibrary.org/nazi-medical-experimentation-at-auschwitz-birkenau (Source: The State Museum of Auschwitz-Birkenau), accessed 01.06.2018.

innovations have complicated the controversy surrounding what many call the "*new eugenics*".[13]

Given the fact that both religious and secular laws strictly prohibit and sanction the act of depriving another person of his/her life, it is absurd to talk about organized legitimate pseudo-scientific groups, which would work on the *final solution* for the *ineligible misfits*. In the eye of religion, morality and jurisprudence, every human being is *eligible* by the very fact that he is a human being. Nevertheless, bearing in mind the greatest atrocities in human history that occurred during World War II, permanent caution must be exercised in order to prevent such a barbaric advancement of pseudo-science and harmful practices of the so-called scholars and visionaries.

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[13] See: Britannica.com:Al Eugenics -Description, History & Modern Eugenics, https://www.britannica.com/science/eugenics-genetics, accessed 02.06.2018.

EUGENIKA

Eugenika je pseudonauka o poboljšanju i kontroli ljudske vrste i to tako što bi trebalo sprečiti inferiorne ljude da imaju decu (negativna eugenika) i podsticati superiorne da se što više razmnožavaju (pozitivna eugenika). Eugenički pokret vuče poreklo iz ranog 19. veka i u velikoj meri se razvijao pod uticajem Francisa Galtona u Velikoj Britaniji i Charlesa Davenpotra u SAD. Ova dva naučnika su ohrabrivala uzgajanje poželjnih i reproduktivnu kontrolu nepoželjnih ljudi. U nacistički orijentisanoj Nemačkoj, eugenika doživljava vrtoglavu ekspanziju i svoj vrhunac. Eugenika se, budući da je bila esencija mnogih rasnih zakona, na najsurovije načine primenjivala u praksi putem masovnih eutanazije manje vrednih, sterilizacije, gasnih komora i i stravičnih eksperimenata na ljudima nižih rasa.

Ključne reči: *eugenika, pozitivna eugenika, negativna eugenika, nacizam.*

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