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Poštovani čitaoci, kolege i autori,

Pred vama je prvi broj časopisa CIVITAS za 2021. godinu. Časopis u kontinuitetu, devetu godinu zaredom, objavljuje radove koji se bave različitim, aktuelnim pitanjima i problemima iz oblasti prava, bezbednosti, psihologije, filologije i ekonomije, kao i interdisciplinarnim istraživanjima iz navedenih naučnih disciplina.

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Od ovog broja časopis izlazi dvojezično, na srpskom i engleskom jeziku.

Radovi prihvaćeni za objavljivanje, odnosno radovi koji su prošli postupak recenzije obuhvataju različita pitanja iz domena društvenih nauka. U fokusu ovog broja su radovi koji analiziraju vremensku perspektivu kao prediktor stresa kod menadžera, socijalne devijacije i "crni talas", percepciju pravednosti u organizaciji i namera za napuštanje organizacije, uticaj drugostepenih poreskih upravnih akata na budžet Republike Srbije, načelo ne bis in idem u kontekstu evropskog naloga za hapšenje, koncept bračnog očinstva u savremenom porodičnom pravu i evoluciju ideje rađanja zatvora, kao i prikaz knjige izdate na engleskom jeziku a u prevodu: „Osiguranje i preduzetništvo: teorijska i empirijska analiza međuzavisnosti".

Sve informacije o časopisu, uputstva za autore i recenzente i sastav redakcije i imena recenzenata mogu se naći na sajtu na srpskom i engleskom jeziku. Prijava radova obavlja se putem sajta časopisa na internet adresi http://civitas.rs/index.php/prijava-rada ili mejlom na redakcija@civitas.rs

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Do sledećeg broja,

Prof. dr Vladimir Njegomir

U Novom Sadu, 8. avgusta 2021. godine

Editor's Note

Dear readers, authors, and colleagues,

I am delighted to introduce the first issue of the CIVITAS journal for 2021. For the past 9 years, the journal has continuously published articles dealing with various contemporary issues in the fields of law, security, psychology, philology, and economics, as well as interdisciplinary research involving the abovementioned fields.

The CIVITAS journal has been ranked as *a prominent national journal* (M52 category) pursuant to the decision of the Serbian Ministry of Education, Science and Technological Development. The journal has also been indexed in several international databases: ERIH PLUS, CNKI (Chinese research database), Ulrich's Periodicals Directory, J-Gate (Indian bibliographic database), and CEEOL (Central and Eastern European Online Library).

As of this issue, the journal will be published both in Serbian and English.

The articles in this issue deal with various topics in social sciences: time perspective as a stress predictor among executives, social deviations and "the black wave" in Yugoslav cinema, perception of organizational justice, impact of second-instance tax administrative acts on Serbia's budget, the *ne bis in idem* principle in the context of European arrest warrant, marital paternity in contemporary family law, and evolution of prison as an institution. This issue also includes the review of the book *Interdependence Between Insurance and Entrepreneurship: Theoretical and Empirical Analysis.*

Journal details, instructions for authors and reviewers, editorial board and reviewers' details can be found on the journal web site in both English and Serbian. Papers may be submitted online following the link http://civitas.rs/index.php/prijava-rada or via e-mail to redakcija@civitas.rs.

Finally, I wish to thank all the authors for their contributions, and invite prospective collaborators to submit their papers dealing with issues in social sciences, which CIVITAS has published continuously since 2011.

Until the next issue, with kind regards,

Professor Vladimir Njegomir

Novi Sad, 8 August 2021

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Articles

CIVITAS, 2021, 11(1), 13-23
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Tea Nedeljković[2**]

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VREMENSKA PERSPEKTIVA KAO PREDIKTOR STRESA KOD MENADŽERA

Rezime: Cilj ove studije je da odredi odnos između dimenzija vremenske perspektive i percipiranog stresa kod menadžera čije je radno iskustvo – kao menadžera – od jedne do tri godine. Osnovna pretpostavka je bila da su dimenzije vremenske perspektive empirijski potvrđeni korelati brojnih psihičkih funkcija, te da bi, shodno tome, mogle biti korelati percipiranog stresa. Stoga smo postavili hipotezu da su dimenzije vremena značajni prediktori percipiranog stresa kod menadžera. Studija je bila sprovedena na uzorku od 92 menadžera oba pola (od čega je 37% muškaraca i 63% žena). Prosečna starost ispitanika bila je 36,58 godina. Selektivna varijabla za formiranje uzorka bila je dužina radnog iskustva u menadžmentu: od najmanje jedne do najviše tri godine. Pretpostavka za opravdanje uzorka bila je da menadžeri-početnici prihvataju veći broj stimulusa iz okoline kao stresore. Za operacionalizaciju vremenske perspektive upotrebljena je prilagođena verzija Zimbardovog upitnika vemenske perspektive (ZTPI, Zimbardo & Boyd, 1999, adaptacija Kostić & Nedeljković, 2013). Sa 52 stavke upitnik određuje pet dimenzija vremenske perspektive: negativna i pozitivna prošlost, hedonistička i fatalistička sadašnjost i budućnost. Percipirani stres je određivan pomoću rezultata dobijenih na Koenovom upitniku za percipirani stres (The Perceived Stress Scale – Skala Percipiranog Stresa, PSS-10, Cohen

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et al, 1983). Dobijen je značajan regresioni model koji objašnjava 17,6% varijanse u percepciji stresa kod menadžera. Kao jedini značajan nezavisni prediktor u grupi dimenzija vremenskih perspektiva istaknuta je *budućnost* (β = 0,416). Menadžeri okrenuti budućnosti pokazali su veći stepen percipiranog stresa. Postignuti rezutati potvđuju početnu pretpostavku predikcione snage dimenzija vremenske perspektive koje se odnose na intenzitet percipiranog stresa. Rezultati predstavljaju prilog razumevanju povezanosti između vremenskih perspektiva i percepcije stresa tokom prvih godina rada u ovom poslu i mogu poslužiti kao osnova za buduća istraživanja ovih konstrukata.

Ključne reči: vremenske perspektive, percipirani stres, menadžeri

1. Uvod

Sposobnost menadžera da se snalaze u najrazličitijim stresnim situacijama postaje izrazito značajan faktor za uspeh organizacija (Giorgi et al, 2015). Kompleksni fenomen menadžmenta uključuje kako aditivne tako i integrativne mehanizme individualnopsiholoških i kontekstualnih faktora, drugim rečima, personalne karakteristike pojedinca i uticaj društvenog okruženja. U svojoj studiji o menadžmentu Koter (Kotter, 2012, str. 18) tvrdi: „Možda je najveći izazov sa kojim se menadžeri danas suočavaju očuvanje svoje kompetitivnosti u neprekidno stresnom okruženju." Neki istraživači definišu menadžment kao *obeležje* ili *ponašanje*, dok ga drugi, sa relacionalne tačke gledišta, posmatraju primarno kao *procesuiranje informacija* (Northouse, 2016). Empirijska istraživanja treba da doprinesu teorijama menadžmenta, s jedne strane konceptualno, stvaranjem novog znanja, kao i, s druge strane, u postepenom napredovanju u objašnjenju tog fenomena (Mathieu, 2016). Postavljanje novih pitanja na koje nemamo brze i precizne odgovore ne mora dovesti do revolucionarne promene paradigme, ali može biti dobra strategija razvoja teorija menadžmenta (Davis, 2010). Iz rezultata prethodnih studija neki autori zaključuju da su osobe koje preferiraju menedžersku poziciju (ili kasnije postaju menadžeri) ambicioznije, agresivnije, kompetitivnije i sklonije samoevaluaciji u poređenju s dru-

gima (Čizmić et al, 1995, prema Panić, 2016). Iz toga možemo zaključiti da je menadžment, uz ostalo, i projekcija sopstvene (menadžerove) ličnosti (Marković, 2006). Kriterijumi uspešnog vođstva i menadžementa menjali su se tokom vremena, od lako uočljivih, tipičnih atributa rukovodioca, ka u većoj meri integrativnom pristupu koji uključuje međuigru karakternih crta ličnosti i kontekstualnih faktora (Zaccaro, 2007, Kalisch & Gil, 2016). Iako ne postoji saglasnost oko ključnih karakternih crta uspešnog menadžera, većina istraživača je saglasna da ovaj pristup ne bi trebalo napustiti, nego da bi se uključivanjem novih varijabli i povezanosti u istraživanje postiglo bolje objašnjenje ovog kompleksnog fenomena (Hellriger & Slocum, 1989, prema Marković et al., 2004).

U našoj studiji bavimo se korelacijama varijabli vremenske perspektive i percipiranog stresa kod menadžera koji su na početku svojih karijera, osoba koje upravljaju svojim organizacijama ili delovima organizacija samo od jedne do tri godine, polazeći od pretpostavke da percepcija socijalnog okruženja nije ista kod menadžera početnika na toj poziciji i onih koji imaju mnogo više iskustva, kao i od toga da je verovatno da oni koji su proveli u službi kraći vremenski period, doživljavaju veći broj stimulusa iz socijalnog okruženja kao stresore. Razmatramo dominantnu vremensku perspektivu menadžera kao mogući prediktor percipiranog stresa.

Bez obzira na to da li ćemo definisati vremensku perspektivu kao stav, fleksibilni dinamički proces ili stabilnu dispoziciju ličnosti, prethodne studije sugerišu da vremenska perspektiva utiče na mnoge značajne fenomene u savremenom svetu (Zimbardo, Keough, & Boyd, 1997; Harber, Zimbardo, & Boyd, 2003; Holman & Zimbardo, 2009, prema Kostić & Nedeljković, 2013).

Zimbardo i Bojd su pokazali da postoji povezanost između perspektive vremena i velikog broja demografskih, bihejvioralnih i personalnih varijabli (Dunkel & Weber, 2010, prema Kostić & Nedeljković, 2013), i takođe ukazali na značajnu prediktivnu moć svog upitnika u vezi sa akademskim uspehom, prokrastinacijom i antisocijalnim ponašanjem (Adelabu, 2007; Horstmanshof & Zimitat, 2007; Diaz-Morales et al., 2008; Kruger, Reicshi, & Zimmerman, 2008; prema Kostić & Nedeljković, 2013).

1.1. Problem i ciljevi ove studije

Cilj ove studije jeste da utvrdi odnose između vremenske perspektive i percipiranog stresa kod menadžera koji tu poziciju zauzimaju od jedne do tri godine. Kao hipotezu postavili smo sledeće: dimenzije vremenske perspektive značajni su prediktori percipiranog stresa kod menadžera. Osnovna pretpostavka je da su vremenske dimenzije empirijski potvrđeni korelati brojnih psihičkih funkcija i prema tome mogu biti korelati percipiranog stresa. Druga je pretpostavka da menadžeri početnici doživljavaju više stimulusa iz okoline kao stresore.

2. Metod

2.1. Uzorak

Uzorak čine 92 menadžera oba pola (od čega 37% muškaraca i 63% žena) čija je prosečna starost 36,58 godina. Selektivna varijabla za formiranje uzorka jeste dužina radnog iskustva u menadžmentu u trajanju od jedne do tri godine.

Tabela 1: Struktura uzorka u odnosu na pol

	Frekvencija	Procenat
Muški	34	37,0
Ženski	58	63,0
Ukupno	92	100,0

Kao što možemo videti iz tabele, gotovo dve trećine uzorka čine žene, a samo jednu trećinu muškarci. Balansiranje uzorka po kriterijumu pola zahtevalo bi dosta vremena, stoga bi i istraživanje bilo produženo i troškovi povećani, zahvaljujući tome što je inicijalni kriterijum bio od jedne do tri godine radnog iskustva u menadžmentu.

Tabela 2: Struktura uzorka u odnosu na životnu dob

	N	Minimum	Maksimum	Srednja vrednost	Stand. devijacija
Broj godina	92	20	59	36,58	9,683
Radno iskustvo (u godinama)	92	1.00	3.00	1,8913	,84133

U našem uzorku je najmlađi menadžer star 20 godina, a najstariji 59 godina. Prosečna starost ispitanika je 36,58 godina. To pokazuje da je većina ispitanika zauzela menadžerske pozicije u zrelim godinama, nakon stečenog radnog iskustva.

2.2. Procedura

Istraživanje je sprovedeno na teritoriji centralnog i južnog dela Republike Srbije i u nekoliko opština Autonomne Pokrajine Vojvodine. Menadžeri sa radnim iskustvom od jedne do tri godine u menadžmentu zaposleni su u organizacijama u državnom i privatnom vlasništvu, različitih veličina u pogledu broja zaposlenih. Organizacije u državnom vlasništvu bile su lokalne uprave, zdravstvene institucije, obrazovne institucije, javna preduzeća, fondovi ili agencije i slično, dok su organizacije u privatnom vlasništvu bile iz sektora proizvodnje, trgovine, usluga, privatne obrazovne ili manje privatne zdravstvene organizacije. U svim gore navedenim organizacijama menadžerske funkcije su formalno definisane internom strukturom tih organizacija. Učesnici u istraživanju su, nakon što su bili upoznati sa prirodom i ciljevima istraživanja, dali svoj usmeni pristanak, a upitnike su popunjavali individualno.

2.3. Merenje

Da bi se operacionalizovala vremenska perspektiva, upotrebljena je prilagođena verzija Zimbardovog upitnika za vremensku perspektivu (ZTPI, Zimbardo & Boyd, [1999], adaptacija Kostić & Nedeljković, 2008). Upitnik ima 52 stavke i određuje pet dimenzija vremenske perspektive: negativnu i pozitivnu prošlost, hedonističku i fatalističku sadašnjost i budućnost.

Percipirani stres je bodovan na Koenovom upitniku za percipirani stres (*The Perceived Stress Scale, PSS-10, Cohen et al, 1983)*. To je upitnik sa 10 stavki o mislima i osećanjima osoba koje se odnose na događaje proteklog meseca koje su one smatrale stresnim.

2.4. Analiza podataka

Metode merenja deskriptivne statistike (frekvencija, procenat, srednja vrednost, standardna devijacija), korelacija i linearna analiza regresije upotrebljene su u procesu analize podataka. Pre primene korelacionih tehnika i regresione analize, varijable su bile transformisane u *z-skorove*.

3. Rezultati

Tabela 3: Korelacija između vremenske perspektive i percipiranog stresa

		Prošlost neg.	Prošlost poz.	Sadašnjost fatalistička	Sadašnjost hedonistička	Budućnost
Percipirani stres	Pearson Correlation	.188	.150	.147	-.012	-.400**
	Sig. (2-tailed)	.073	.155	.163	.911	.000
	N	92	92	92	92	92

Kao što se vidi, jedina signifikantna i izrazito negativna korelacija postoji između percipiranog stresa i dimenzije vremenske perspektive – a to je *budućnost*. Menadžeri sa dominantnom vremenskom perspektivom *budućnosti* doživljavaju veći broj stimulusa iz društvene okoline kao stresore.

Tabela 4: Parametri procene regresionog modela

R	R kvadrat	Usklađen R kvadrat	Standardna greška procene
.419[a]	.176	.128	1.01432599

Tabela 5: Indikatori značaja regresionog modela

	Model	Suma kvadrata	df	Srednja vrednost kv.	F	Sig.
1	Regresioni	18.856	5	3.771	3.665	.005
	Rezidualni	88.482	86	1.029		
	Ukupni	107.338	91			

Dobijeni regresioni model signifikance objašnjava 17,6% varijanse u percepciji stresa kod menadžera koji imaju od jedne do tri godine radnog iskustva u menedžmentu. Dimenzije vremenske perspektive mogu biti značajni prediktori percipiranog stresa kod menadžera.

Tabela 6: Koeficijenti

	β	t	sig
(Konstanta)		1.973	.052
Prošlost negativna	.023	.208	.835
Prošlost pozitivna	.101	.957	.341
Sadašnjost fatalistička	-.066	-.578	.565
sadašnjost Hedonistička	-.070	-.677	.500
budućnost	.416	3.505	.001

Budućnost je istaknuta kao jedini signifikantni prediktor u grupi dimenzija vremenske perspektive (β = 0,416). Menadžeri okrenuti budućnosti imaju veći skor percipiranog stresa.

4. Diskusija i zaključak

Dominantna vremenska perspektiva menadžera „početnika" i individualnost u percepciji stresa predstavljaju psihološke konstrukte

čije smo korelacije određivali u našoj studiji. Rezultati potvrđuju našu hipotezu o prediktivnoj snazi dimenzija vremenskih perspektiva u predikciji percipiranog stresa kod menadžera. U grupi mogućih vremenskih perspektiva kod menadžera s radnim iskustvom do tri godine u menadžmentu, vremenska dimenzija *budućnosti* istaknuta je kao jedini nezavisno signifikantni prediktor, što sugeriše da menadžeri orijentisani ka budućnosti doživljavaju veći broj stimulusa iz društvenog okruženja kao stresore.

Ranije studije su takođe potvrdile uticaj psihološke pravovremenosti na sveukupno ljudsko radno ponašanje (Bluedorn & Denhardt, 1998; Strobel, Tumasjan, Sporrle & Welpe, 2013, prema Ortiz & Davis, 2016). Izučavanje mehanizama uticaja dominantne vremenske perspektive na varijable povezane sa menadžmentom predstavlja važan korak u razumevanju efekata vremenske perspektive na sveukupno organizaciono ponašanje, uključujući percipiranje stresa na poslu, predanost radu, zadovoljstvo poslom, često izostajanje s radnog mesta i slično. Sposobnost anticipacije i stvaranje planova za budućnost, kao i organizovanje efikasnog radnog ponašanja, predstavljaju važne osobine menadžera i ova pretpostavka ukazuje na mogućnost da određena osoba poseduje sposobnosti funkcionalnog ponašanja u sadašnosti i planiranja odgovarajućih ciljeva za budućnost (Locke, 1975; Gjesme, 1983; prema Seijts, 1998). Izlaženje na kraj sa stresorima koji potiču iz okoline, takođe predstavlja jedan od bazičnih potencijala menadžera. Lazarus i Folkman (1984) ukazuju na to da je stres u velikoj meri personalizovani proces koji uglavnom zavisi od karakternih crta ličnosti. Isti stresor posmatran kroz prizmu perceptivno-kognitivnog tretmana različitih individua uzrokuje različite stresne reakcije (Zotović, 2002), i upravo je to bila ishodišna tačka za našu hipotezu da su menadžeri sa kraćim radnim iskustvom u menadžmentu verovatno podložniji tome i da doživljavaju veći broj stimulusa iz društvenog okruženja kao stresore.

Vremenska perspektiva kao „opšta sposobnost čoveka da predvidi, iluminira i strukturira budućnost" (Gjesme, 1983, str. 452, prema Seijts, 1998) jeste „stub menadžmenta" koji uključuje zrelost razmišljanja i odgovarajući efikasni stav prema prošlosti, sadašnjosti i budućnosti (Munro, 2012). Svest o vremenskom rasponu koji je povezan sa određenom aktivnošću u velikoj meri određuje društveno okruženje i

naročito one stimuluse iz tog okruženja koje percipiramo kao stresore. Ona takođe definiše tip aktivnosti, način delovanja i ciljeve koje osoba sebi postavlja (Seijts, 1998). Vremenska perspektiva je jedna od najuticajnijih dimenzija psihičkog života čoveka zato što usmerava ponašanje prema oblicima koji su neproduktivni, ili čak destruktivni za ličnost ili organizaciju, ali i prema oblicima ponašanja koji donose dobrobit kako pojedincu tako i kolektivu, pa je stoga osobito važno spoznati njen uticaj u kontekstu percepcije stresa u društvenom okruženju menadžera (Zaleski & Przepiorka, 2014). Ovi stavovi sugerišu da su mogući različiti rezultati u upravljanju u odnosu prema dominantnoj vremenskoj perspektivi menadžera oni koji će odrediti da li će on/ona delovati promišljeno i valjano i odrediti prioritete, odnosno, da li će biti u stanju da adekvatno reaguje na kognitivnom i bihejvioralnom nivou u stresnim situacijama (Munro, 2012).

Vremenska perspektiva (time perspective – TP) *budućnost* može biti definisana kao sposobnost planiranja i organizovanja neke aktivnosti koja prevazilazi sadašnji trenutak (Suto & Frank, 1994, prema Seijts, 1998). Ličnosti sa dominantnim TP *budućnost* spremne su da odlože trenutno zadovoljenje da bi ostvarile važne ciljeve u budućnosti. Dakle, u kontekstu izučavanja procesa menadžmenta, vremenska perspektiva *budućnost* kao odnosna varijabla ima veliki značaj za istraživanje jer može da objasni kognitivno razumevanje odnosa između glavnih elemenata vremena: prošlih događaja, percepcije realnosti i anticipacije ciljeva u budućnosti (Lock & Latham, 1990, prema Seijts, 1998). Vremenska perspektiva *budućnost* povezana je sa sposobnošću organizovanja direktnih aktivnosti čija korist nije vidljiva trenutno i koja je naročito važna za menadžment, i čija kompleksnost raste kod onih, kao što su učesnici u našem istraživanju, koji su početnici i nemaju dugo radno iskustvo u menadžmentu. Sposobnost da se problemi prevaziđu, u većini slučajeva, raste uporedo sa povećanjem radnog iskustva, ali dug period izloženosti stresu može ugroziti mentalno zdravlje i opštu sposobnost pojedinca da se uhvati u koštac s problemima (Backović i dr., 2000). Rezultati studije Kneževića (2016) ukazuju da više od polovine menadžera ima porast različitih indikatora profesionalnog stresa. U skladu sa tim, smatrali smo da razjašnjenje korelacije percepcije stresa kod menadžera sa najvećim mogućim brojem varijabli može biti

od velikog teorijskog i praktičnog značaja. Rezultati, takođe, postavljaju pitanje promena u kvalitetu i intenzitetu utvrđenih korelacija. Inicijalni period „učenja zanata" u menadžmentu i prilagođavanje društvenoj poziciji menadžera može da se razlikuje jednim skupom karakteristika koji uključuju i dominantnu vremensku perspektivu, ali s vremenom, izraz i dominantnost karakteristika, kao i percepcija društvenog okruženja, mogu da se promene.

Rezultati naše studije su prilog razumevanju odnosa između vremenske perspektive i percepcije stresa kod menadžera tokom prvih godina rada u tom poslu i mogu poslužiti kao polazište za buduće istraživanje ovih konstrukata.

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TIME PERSPECTIVE AS PREDICTOR OF PERCEIVED STRESS IN MANAGERS

Abstract: The aim of this study was to determine relation between dimensions of time perspective and perceived stress among managers, who have one to three years of working experience as managers. The basic assumption was that dimensions of time perspective are empirically confirmed correlates of numerous psychic functions, thus they can also be correlates of perceived stress. Therefore, we set hypothesis that dimensions of time perspective are significant predictors of perceived stress in managers. The study was conducted on the sample of 92 managers of both genders (37% of men and 63% of women). Average age of examinees was 36.58 years. Selective variable for formation of the sample was the length of working experience in management - from minimum one up to maximum three years. The assumption for the sample justification was that managers-beginners experience bigger number of stimuli from the environment as stressors. An adapted version of Zimbardo's time perspective questionnaire (ZTPI, Zimbardo & Boyd, 1999, adaptation of Kostić & Nedeljković, 2013) was used to operationalize the time perspective. The questionnaire with 52 items determines five dimensions of time perspective – negative and positivie past, hedonistic and fatalistic present and future. Perceived stress is determined by score on Cohen's questionnaire for perceived stress (The Perceived

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Stress Scale, PSS-10, Cohen et al, 1983). Significant regression model was obtained, which explains 17,6% variance in perception of stress in managers. As the only independently significant predictor in the group of dimensions of time perspective, *future* was highlighted (β = 0,416). Managers who are turned towards the future have higher scores of the perceived stress. The results confirmed the initial assumption on predictor power of dimensions of time perspective in predicting intensity of the perceived stress. The results represent contribution to understanding the relationship between dimensions of time perspective and stress perception during the first years of management and may be the starting point for future research of those constructs.

Key words: time perspectives, perceived stress, managers

Introduction

Capability of managers to cope with various stressful situations started becoming increasingly important factors for successfulness of organizations (Giorgi et al, 2015). Complex phenomenon of management also includes both additive and integrative mechanisms of individual psychological and contextual factors, that is, both personal characteristics of an individual and influence of social environment. In his study on management Kotter (Kotter, 2012, p.18) says: "probably the greatest challenge that managers face today is preserving their own competitiveness in constantly stressful environment." Some researchers define management as *feature* or *behavior*, while others view management primarily as *information processing* and observe it from the relation point of view (Northouse, 2016). With regards to contribution to the management theories, empirical researches should provide conceptual contribution by creation of original knowledge and gradual progress in explanation of that phenomenon (Mathieu, 2016). It does not have to be revolutionary change of paradigm, but raising new questions for which we do not have quick and quite precise answers, may be a good strategy

for the development of management theories (Davis, 2010). From results of previous studies, some authors conclude that persons who prefer the manager position (or later become managers) are more ambitious, more aggressive, more competitive, more inclined to self-evaluations compared to others (Čizmić et al, 1995, according to Panić, 2016), so we can conclude that management, among other things, is also projection of the manager's personality (Marković, 2006). Criteria of effective leadership and management have changed over time, from easily visible, typical leadership attributes to integrative approach that includes the interplay of personal traits and contextual factors (Zaccaro, 2007, Kalisch & Gil, 2016). Although no agreement on the key traits of a successful manager has been achieved, most researchers agree that this approach should not be abandoned, but new variables and connections should also be included in the study that will explain complexity of the management phenomenon (Hellriger & Slocum, 1989, according to Marković et al., 2004).

In our study, we dealt with correlation of variables the time perspective and perceived stress in managers who are at the beginning of their careers, that is, they manage their organizational units for only 1-3 years, starting from the assumption that perception of social environment stressors is not the same in managers who are beginners at that position compared to those who are much more experienced, and that probably managers with shorter length of management service experience bigger number of the social environment stimuli as the stressors. We consider the dominant time perspective of the manager as a possible predictor of perceived stress.

Regardless the fact whether we define the time perspective as an attitude, a flexible dynamic process or a stable disposition of personality, the studies suggest that the time perspective affects many significant phenomena in the modern world (Zimbardo, Keough & Boyd, 1997; Harber, Zimbardo & Boyd, 2003; Holman & Zimbardo, 2009, according to Kostić and Nedeljković, 2013).

Zimbardo & Boyd, determined the connection between time perspective and a large number of demographic, behavioral and personal variables (Dunkel & Weber, 2010, according to Kostić and Nedeljković, 2013), and also significant predictive power of their questionnaire

in relation to the academic success , procrastination and anti-social behavior. (Adelabu, 2007; Horstmanshof & Zimitat, 2007; Diaz-Morales et al., 2008; Kruger, Reicshi & Zimmerman, 2008; according to Kostić and Nedeljković, 2013).

Zimbardo & Boyd, determined the correlation between time perspective and large number of demographic, behavioral and personal variables (Dunkel & Weber, 2010, according to Kostić and Nedeljković, 2013), while prediction power of their questionnaire in relation to the academic success, procrastination and anti-social behavior is also significant. (Adelabu, 2007; Horstmanshof & Zimitat, 2007; Diaz-Morales et al., 2008; Kruger, Reicshi & Zimmerman, 2008; according to Kostić and Nedeljković, 2013).

Problem and aims of the study

The aim of the study is to determine relations between the time perspective and perceived stress in managers who have occupied manager position from 1 to 3 years. Therefore, we set **the hypothesis** that dimensions of time perspective are significant predictors of perceived stress in managers. The basic assumption was that time dimensions are empirically confirmed correlates of numerous psychic functions, thus they can be correlates of the perceived stress. Assumption was that the managers-beginners experience more stimuli from the environment as stressors.

Method

Sample

92 managers of both genders (37% of men and 63% of women). Average age of examinees was 36.58 years. Selective variable for formation of the sample was length of working experience in management (1-3 years).

Table 1: Structure of sample in relation to gender

	Frequency	Percent
Male	34	37.0
Female	58	63.0
Total	92	100.0

In our sample of managers, as we can see in the table, there were almost two thirds of women and one third of men. Balancing the sample by gender criterion would require a lot of time, it would extend the research and increase costs due to the fact that initial criterion for inclusion in the sample was 1-3 years length of working experience in management.

Table 2: Structure of the sample in relation to age

	N	Minimum	Maximum	Mean	Std. Deviation
Age	92	20	59	36.58	9.683
Working experience (in years)	92	1.00	3.00	1.8913	.84133

The youngest manager in our sample was 20 years of age while the oldest was 59 years, and the average age of the examinees was 36.58 years, which shows that most of our examinees started occupying managerial positions in mature years, after gaining work experience.

Procedure

The study was conducted on the territory of central and southern parts of the Republic of Serbia and in several municipalities of the Autonomous Province of Vojvodina. Managers with 1-3 years length of working experience in management were employed by organizations of both state and private ownership status, of different sizes in relation to

the number of employees. The state-owned organizations included in the study were local governments, health institutions, educational institutions, public companies, funds or agencies, and similar, while privately owned organizations that were included in the study were from the sectors of production, trade, services, private educational or smaller private health organizations. In all of the above organizations, management functions are formally defined by internal structure of the organization. The study participants gave oral information consent, after being acquainted with nature and objectives of the study, and they filled in the questionnaires individually.

Measures

An adapted version of Zimbardo's time perspective questionnaire was used to operationalize the time perspective (*ZTPI, Zimbardo& Boyd, (1999), adaptation of Kostić & Nedeljković, 2008*). The questionnaire with 52 items determines five dimensions of time perspective – negative and positive past, hedonistic and fatalistic present and future.

Perceived stress is determined by score on Cohen's questionnaire for perceived stress (*The Perceived Stress Scale, PSS-10, Cohen et al, 1983)*. The questionnaire with 10 items is about feelings and thoughts according to events that happened in the last month, which were stressful for them.

Data analysis

Measures of descriptive statistics (frequency, percent, mean, standard deviation), correlation and linear regression analysis have been used in data analysis process. Before applying correlation techniques and regression analysis, the variables were transformed into *z-scores*.

Results

Table 3: Correlation between time perspectives and perceived stress

		Past Negative	Past Positive	Present Fatalistic	Present Hedonistic	Future
Perceived stress	Pearson Correlation	.188	.150	.147	-.012	-.400**
	Sig. (2-tailed)	.073	.155	.163	.911	.000
	N	92	92	92	92	92

As it is shown, the only significant and high negative correlation exists between perceived stress and dimension of time perspective *Future*. Managers with dominant time perspective *future* experience greater number of stimuli from the social environment as stressors.

Table 4: Parameters of the regression model estimation

R	R Square	Adjusted R Square	Std. Error of the Estimate
.419[a]	.176	.128	1.01432599

Table 5: Indicators of the Regression model significance

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	18.856	5	3.771	3.665	.005
	Residual	88.482	86	1.029		
	Total	107.338	91			

A significant regression model was obtained which explains 17,6 % variance in perception of stress in managers with 1-3 years length of working experience in management. Dimensions of time perspective can be a significant predictor of perceived stress in managers.

Table 6: Coefficients

	β	t	sig
(Constant)		1.973	.052
Past Negative	.023	.208	.835
Past Positive	.101	.957	.341
Present Fatalistic	-.066	-.578	.565
Present Hedonistic	-.070	-.677	.500
Future	.416	3.505	.001

The *future* has been highlighted as the only single significant predictor in the group of dimensions of time perspective (β = 0,416). Managers who are turned towards *future* have higher scores of the perceived stress.

Discussion and conclusion

The dominant time perspective of managers "beginners" and individuality in perception of stress represent the psychological constructs, which correlation we have determined in our study. The results confirmed our hypothesis regarding the prediction power of dimensions of time perspectives in prediction of perceived stress in managers. In the group of possible dominant time perspectives in managers with up to 3 years length of working experience in management, as the only independently significant predictor, the time perspective *future* has been highlighted, which suggests that managers who are more orientated towards future experience greater number of stimuli from the social environment as stressors.

Earlier studies have confirmed the influence of psychological timeliness on overall human behavior at work (Bluedorn & Denhardt, 1998; Strobel, Tumasjan, Sporrle & Welpe, 2013, according to Ortiz & Davis, 2016). Studying the influence mechanisms of the dominant time perspective on management-related variables is an important step towards understanding the effects of time perspective on overall organizational behavior, including perception of stress at work, work commitment, job satisfaction, absenteeism, and similar. Capability of anti-

cipation and making plans for future, as well as organization of effective behavior, represent very important trait of managers, and this starting assumption points to possibility that person has capacities for functional behavior in the present and planning of adequate goals for the future (Locke, 1975; Gjesme, 1983; according to Seijts, 1998). It also represents basic potential of the manager to deal with social environment stressors. Lazarus and Folkman point out that stress is highly personalized process that largely depends on the personality traits (Lazarus & Folkman, 1984). The same stressor, through the prism of perceptive-cognitive treatment of different individuals, causes various stress reactions (Zotović, 2002), which was the starting point for our assumption that managers with shorter length of working experience in management will probably experience greater number of stimuli from the social environment as stressors.

Time perspective, as "the general capacity of man to foresee, illuminate and structure the future" (Gjesme, 1983, p.452, according to Seijts, 1998) is the "pillar of management" that incorporates maturity of thinking and adequate affective attitude towards the past, the present and the future (Munro, 2012). Awareness of the time span to which certain activity is related, largely defines general perception of the social environment, and especially of those stimuli from the environment that we perceive as stressors, but it also defines type of activity, mode of action and goals that a person sets before him/her (Seijts, 1998). The time perspective is one of the most influential dimensions of human psychic life because it can channel behavior towards forms that are unproductive or even destructive to personality or organization, or towards behaviors that bring both personal and collective well-being, and it is therefore particularly important to perceive its influence in the context of stress perception in the social environment of managers (Zaleski & Przepiorka, 2014). The above stated assumptions suggest that there may be different management outcomes in relation to dominant time perspective of the manager, which can determine whether he/she will act with maturity and properly define priorities, that is, whether he/she will be able to respond adequately at the cognitive and behavioral level in stressful situations. (Munro, 2012).

The time perspective (TP) *future* can be defined as ability to plan and organize an activity beyond the present moment (Suto & Frank, 1994, according to Seijts, 1998). Persons with dominant TP *future* are ready to delay instant gratification in order to achieve important goals in the future. Therefore, in the context of studying the management process, the time perspective *future* as a related variable has great research significance because it can explain cognitive understanding of relationship between the major time blocks, past events, perception of reality, and anticipation of goals in the future (Lock & Latham, 1990, according to Seijts, 1998). The time perspective *future* is related to the ability to organize direct activities which benefits are not seen at the moment, which is especially important for management and probably more complex issue for those managers who are beginners at that position, that is, they have short working experience in management (like the participants in our study). Ability to overcome problems in most cases grows with working experience, but long period of stress exposure can undermine mental health and general capacities of the manager for overcoming the problems (Backović et al., 2000). The study findings by Knežević (2016) indicate that more than half of managers have increase in various indicators of professional stress. According to the above mentioned, we consider that clarifying the correlation of stress perception in managers with as many variables as possible can be of great theoretical and practical significance. The results also raise the question of changes in quality and intensity of the established correlations. The initial period of "learning the craftsmanship" of management and adapting to social position of the manager can be distinguished by one set of traits, including the dominant time perspective, but in time, expression and dominance of traits, as well as perception of the social environment, may change.

The results of our study represent a contribution to understanding the relationship between dimensions of time perspective and stress perception during the first years of management, and can be the starting point for future research of these constructs.

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SOCIJALNE DEVIJACIJE I „CRNI TALAS" JUGOSLOVENSKE KINEMATOGRAFIJE: MULTIPERSPEKTIVNOST DEVIJANTNOSTI

Rezime: Osnovni cilj rada jeste istraživanje različitih oblika socijalnih devijacija koje se mogu dovesti u vezu sa fenomenom crnog talasa jugoslovenske kinematografije. Analiza je strukturisana uz oslanjanje na našu opštu tipologiju mogućih modela konekcije između umetničkih i devijantnih sadržaja (1. umetnik kao devijant; 2. prikazivanje devijantnosti kao tema umetničkog dela; 3. umetničko delo kao devijantna pojava ili radnja [Matković, 2017]). Utvrđena je višestruka perspektiva odnosa između crnog talasa i sfere društvene devijantnosti, prisutna na nekoliko različitih nivoa, što pruža osnov za zaključak o multiperspektivnosti devijantnosti povezane sa pomenutim artističkim usmerenjem. Među ostalim zaključcima, uočeno je da je najenergičniju društveno-političku reakciju izazivalo prikazivanje socijalnih devijacija sa političkom konotacijom, kao i devijacija u vezi sa nezadovoljstvom različitih kategorija pripadnika jugoslovenskog društva (to jest onih devijacija koje su direktno ugrožavale opstanak važeće ideologije i vladajućeg režima), dok je kinematografska obrada socijalnopatoloških pojava u užem smislu, iako takođe nepoželjna, ipak bila nešto više tolerisana, bivajući podvrgnuta represijama slabijeg intenziteta.

Ključne reči: crni talas, jugoslovenska kinematografija, socijalne devijacije, socijalna patologija, umetnost i devijantnost.

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1. Crni talas i društvena stvarnost u SFR Jugoslaviji

Govoreći o opštem položaju savremene umetnosti u SFR Jugoslaviji, stav jugoslovenskih vlasti nije bio ujednačen i bitno se razlikovao u zavisnosti od vrste artističke forme o kojoj je reč. Sa jedne strane, odnos vlasti prema likovnim umetnostima bio je obeležen činjenicom da nije postojala neposredna politička kontrola u odnosu na njih (Unterkofler, 2012). Na taj način, stvaraoci koji su delovali u ovoj umetničkoj oblasti uživali su značajan stepen slobode, a neretko i institucionalnu podršku, dokle god njihovo delovanje nije zadiralo u oblast kritike jugoslovenskog društvenog uređenja i političkog režima. Sa druge strane, književnost i film bili su podvrgnuti mnogo represivnijem režimu kontrole, odnosno režimu političke cenzure. Za razliku od njihovih kolega iz sfere likovnih umetnosti, literarni i filmski stvaraoci bili su na taj način izloženi prilično rigoroznom nadzoru, pri čemu su neki od njih pretrpeli i ozbiljne sankcije zbog svog umeničkog rada (Unterkofler, 2012; DeCuir, 2019; Radosavljević, 2019).

Ograničavajući se na oblast filma, posebno mesto u vezi sa materijom socijalnih devijacija u jugoslovenskoj kinematografiji pripada *crnom talasu*. Crni talas jeste naziv koji se koristi za označavanje jednog segmenta posleratne jugoslovenske kinematografije koja se razvijala u okrilju tzv. *novog (jugoslovenskog) filma*. Po svojoj prirodi veoma heterogen, nastao je tokom šezdesetih i bio je aktivan sve do početka sedamdesetih godina dvadesetog veka, kada je putem različitih represivnih mera efektivno okončan, čime je obustavljena jedna specifična kreativna tendencija unutar jugoslovenske filmske umetnosti. Ključno obeležje ostvarenja crnog talasa jeste tendencija realističkog prikazivanja društvene stvarnosti, uz naglašeno fokusiranje na različite socijalne probleme (opštedruštvene, političke, moralne i dr.), uključujući i one koji su predstavljali tabu teme u jugoslovenskom društvu. Bitan sastavni deo takvog umetničkog stremljenja jeste usmerenost pažnje na različite grupe i pojedince sa društvene margine (up. DeCuir, 2019), odnosno, rečima V. Radoslavljevića (2019), na „rubni sloj društva" (str. 90). Još jedna važna objedinjujuća odlika crnotalasne kinematografije jeste uočljiv pesimizam, kao oštar kontrast preovlađujućem optimističkom raspoloženju u jugoslovenskom filmu i jugoslovenskom društvu generalno.

Kako se obično ističe, „glavni tok" tadašnjeg jugoslovenskog filma pokazivao je tendenciju prikazivanja sveopšteg napretka jugoslovenskog društva u epohi samoupravnog socijalizma, neretko služeći i kao direktna društveno-politička propaganda (up. Tirnanić, 2011; Radoslavljević, 2019). Potpuno suprotno tome, crni talas je, kroz realistički i realističko-pesimistički pristup, nastojao da prikaže niz negativnih socijalnih pojava (odnosno, „ružnu stranu života" [Radosavljević, 2019, str. 89]) koje su takođe činile nesporan deo jugoslovenske društvene stvarnosti. Od posebnog značaja za našu analizu jeste okolnost da je u mnogim crnotalasnim filmovima naglašeno prisustvo niza društveno devijantnih pojava, kako u užem značenju toga pojma, tako i u širem. Usled svih navedenih osobina, ostvarenja crnog talasa stekla su status kontroverznog fenomena unutar jugoslovenskog društva, što je za posledicu imalo i stigmatizaciju većeg broja njihovih autora.

Razlog relevantnosti crnog talasa za sociološka (društvena devijantnost), socijalnopatološka i kriminološka istraživanja ogleda se u činjenici da se filmovi ovog pravca u različitim ravnima mogu povezati sa pojavom socijalnih devijacija: ne samo u pogledu obrađivane tematike i fabule već i u širem kontekstu veze između konkretnih filmova, njihovih stvaralaca i društvene zajednice, sa jedne strane i socijalnopatoloških pojava sa druge. Generalno posmatrano, fenomenu crnog talasa posvećen je određeni prostor u stručnoj literaturi povezanoj sa artističkim domenom: u okviru istorijata jugoslovenskog filma, opšte istorije jugoslovenske savremene umetnosti, u umetničkoj kritici i sl. (up. Volk, 1986; Petrović, 1988; Nikodijević, 1995; Gulding, 2004; Tirnanić, 2011; DeCuir, 2019, Radosavljević, 2019; Zlatić, 2020.). Međutim, primetno je odsustvo naučne građe koja bi označenoj pojavi pristupila iz socijalnopatološkog ugla, odnosno iz ugla odnosa crnog talasa sa različitim socijalnim devijacijama. Imajući u vidu navedeno, osnovni cilj ovog rada jeste istraživanje raznovrsnih društvenih devijacija koje se mogu dovesti u vezu sa crnim talasom jugoslovenske kinematografije. U skladu sa postavljenim ciljem, moguće je odrediti konkretne tipove socijalnih devijacija koji će biti proučeni. Za početak, sve devijacije koje će biti uzete u obzir možemo razdvojiti u dve šire kategorije. Za tekuće potrebe, njih ćemo imenovati na sledeći način: 1) *socijalne devijacije u užem smislu*; 2) *socijalne devijacije u širem smislu*. Pod prvom kategorijom po-

drazumevaćemo socijalnopatološke pojave koje se uobičajeno podvode pod uže značenje tog pojma, kao što su: kriminalitet, bolesti zavisnosti, skitničenje, besposličarenje, prosjačenje, prostitucija, kockanje, samoubistva i pokušaji samoubistava (Jakovljević, Đukanović, & Živković 1984; Špadijer-Džinić, 1988; Bošković, 2020; up. takođe i: Đurić, 1961; Lukić, 1976; Janković & Pešić, 1988; Najman, 1985; Milosavljević, 2003). Sa druge strane, nesporno je da postoji i niz drugih društvenih poremećaja koje različiti autori različito definišu, ali im je zajedničko obeležje da se takođe mogu tretirati kao socijalne devijacije, odnosno kao socijalni problemi. O generalnom shvatanju socijalnih devijacija, socijalnih dezorganizacija, socijalnih problema i drugih srodnih pojmova u nekim od poznatih sociooloških, socijalnopsiholoških i kriminoloških studija i teorija, dovoljno je uputiti na autore nekih od klasičnih radova u navedenim naučnim oblastima (up. između ostalih: Brown, 1942; Elliott & Merrill, 1950; Lemert, 1951; Bloch, 1952; Wootton, 1959; Cohen, 1959; Merton, 1961; Sutherland, Cressey, & Luckenbill, 1992). Što se pak tiče ovog istraživanja, poseban značaj imaju neke od takvih negativnih društvenih pojava kao što su, primera radi: siromaštvo, nezaposlenost, beskućništvo, drugi vidovi socijalne ugroženosti, problemi povezani sa disfunkcionalnim porodicama, odnosno sa drugim disfunkcionalnim mikro i makro društvenim sredinama. Takođe, za temu našeg istraživanja važnost imaju i poremećaji u funkcionisanju društveno-političkog sistema i pojedinih njegovih sastavnih delova (naročito nosilaca i predstavnika vlasti), koji zajednički mogu biti okarakterisani kao „sistemske devijacije". Konačno, od značaja za tekuće istraživanje jesu i „antisistemske devijacije", shvaćene kao primeri zadiranja u vrednosti društveno-političkog sistema, odnosno ugrožavanja državnog poretka i vladajućeg režima (Matković, 2021). Sve navedene (inače vrlo heterogene) pojave uzećemo takođe u obzir, svrstavši ih unutar objedinjujuće kategorije koju smo za potrebe ovog rada definisali kao *socijalne devijacije u širem smislu*.

Što se tiče strukture analize, polazeći od ranije ponuđene opšte tipologije društveno devijantnih pojava povezanih sa umetnošću, koja glasi: 1. umetnik kao devijant; 2. prikazivanje devijantnosti kao tema umetničkog dela; 3. umetničko delo kao devijantna pojava ili radnja

(Matković, 2017), opredelili smo se za pristup odabranoj problematici iz tri perspektive. To su: 1) devijantnost kao tema filma; 2) film kao devijantna pojava; 3) umetnik (autor filma) kao devijant. U skladu sa navedenim, prvo ćemo istražiti društveno devijantne pojave unutar tematike i sadržine pojedinih ostvarenja crnog talasa.

2. *Prikazivanje devijantnosti kao tema umetničkog dela*: socijalno devijantne pojave u filmovima crnog talasa

U cilju ograničavanja obima proučenih primera na optimalnu meru, fokusiraćemo se na stvaralaštvo nekolicine poznatih autora koji su u značajnoj meri doprineli kako generalnom razvitku crnog talasa, tako i konkretnom prikazivanju različitih tipova socijalnih devijacija. U skladu sa navedenim, u nastavku ćemo se usredsrediti na rad Živojina Pavlovića, Aleksandra Petrovića, Dušana Makavejeva, Želimira Žilnika, Miroslava Antića, Jovana Jovanovića i Lazara Stojanovića.

Reditelj i scenarista Živojin Pavlović obradio je niz socijalno devijantnih pojava unutar svojih ostvarenja. U njegovim autorskim ili koautorskim filmovima (*Kapi, vode, ratnici* [1962], *Grad* [1963], *Povratak* [1966], *Buđenje pacova* [1967], *Kad budem mrtav i beo* [1968], *Zaseda* [1969], *Crveno klasje* [1970]) mogu se uočiti različite socijalne devijacije u užem smislu, ali i drugi primeri socijalnih problema. Neke od karakterističnih devijacija koje se pominju jesu: različite vrste kriminaliteta i sa njim povezanih pojava (imovinski kriminalitet, nasilnički kriminalitet, seksualni delikti, podvođenje, kriminalno udruživanje, kriminalne bande, kriminalitet maloletnika), alkoholizam, prostitucija, kockanje, vagabundaža i dr. Sa druge strane, obrađuju se i problemi disfunkcionalnih porodica, resocijalizacije i društvenog prilagođavanja lica nakon izdržavanja zavodske kaznene mere, nezaposlenosti, beskućništva i ostalih za društvenu zajednicu relevantnih pitanja. Pored toga, važno je pomenuti i prikaz pojedinih kontroverznih tema koje se odnose na socijalne probleme i interpersonalne odnose tokom jugoslovenske Narodnooslobodilačke borbe (NOB).

Aleksandar Petrović je u svojim crnotalasnim ostvarenjima (*Dvoje* [1961], *Dani* [1963], *Tri* [1965], *Skupljači perja* [1967], *Biće skoro*

propast sveta [1968], *Majstor i Margarita* [1972]) posvetio pažnju raznovrsnim socijalnim devijacijama, kako u urbanoj društvenoj sredini, tako i u ruralnoj. Međutim, jednu od najvećih specifičnosti njegovog pristupa predstavljalo je isticanje socijalnih devijacija u kontekstu pojedinih marginalizovanih društvenih grupa (pre svega, romske nacionalne manjine), o čemu najbolje svedoči film *Skupljači perja*. Ilustracije radi, već samo u ovom delu može se uočiti najširi spektar socijalnopatoloških manifestacija, kao što su: kriminalitet (imovinski, nasilnički – uključujući i porodično nasilje, nasilje nad ženama, nasilje nad decom), prostitucija, skitničenje, prosjačenje, seksualne devijacije (incest, pedofilija); problem disfunkcionalnih porodica, skrajnutost i ugroženost pojedinih zajednica, diskriminacija po nacionalnoj osnovi, opšti odnos prema nacionalnim manjinama i ostalo.

Dušan Makavejev je takođe obradio niz socijalnih devijacija u filmovima kao što su: *Parada* (1962), Čovek nije *tica* (1965), *Ljubavni slučaj ili tragedija službenice PTT* (1967), *Nevinost bez zaštite* (1968), *W.R. – Misterije organizma* (1971). U njima se mogu prepoznati: nasilnički kriminalitet (računajući i porodično i međupartnersko nasilje), imovinski kriminalitet, alkoholizam, kao i određene seksualne devijacije. Pored toga, spominju se i drugi društveni problemi, kao što su: socijalna ugroženost, siromaštvo, loši životni uslovi i sl., a takođe se uočava i kritika određenih elemenata komunističkog i socijalističkog društvenog uređenja (uključujući i jugoslovensko društvo).

Kada govorimo o odnosu crnog talasa i socijalnih devijacija, posebno mesto pripada Želimiru Žilniku. Među glavnim razlozima za to jeste podatak da je Žilnik, kao jedan od začetnika žanra *dokudrame*, u sklopu svojih dokumentarnih filmova prikazao širok spektar *istinitih* primera socijalno devijantnih pojava koje su, iako na margini društva (a neretko i namenski prikrivane), nedvojbeno bile deo jugoslovenske stvarnosti. Takve pojave prikazane su prevashodno u sledećim ostvarenjima: *Žurnal o omladini na selu zimi* (1967), *Nezaposleni ljudi* (1968), *Pioniri maleni, mi smo vojska prava, svakog dana ničemo ko zelena trava* (1968), *Crni film* (1971). Unutar njih, obrađene su sledeće društvene devijacije: maloletnička delinkvencija u najširem smislu, imovinski kriminalitet, nasilnički kriminalitet, ugrožavanje javnog reda i mira, (maloletnička) prostitucija, skitničenje, prosjačenje, alkoholizam, suicidne

tendencije. Osim toga, obrađeni su i drugi socijalni problemi, poput: siromaštva, nezaposlenosti, beskućništva, disfunkcionalnih porodica, neadekvatnog postupanja policije i drugih nadležnih organa. Sa druge strane, najoštriju društvenu reakciju izazvalo je Žilnikovo dugometražno ostvarenje *Rani radovi* (1969) u kome je fokus, umesto na socijalne devijacije u užem smislu, bio stavljen na prikaz socijalno nepoželjnih (i za tadašnju vlast vrlo nepopularnih) pojava u funkcionisanju jugoslovenskog društva i Jugoslavije kao društveno-političke zajednice. Na sve ovo slikovito ukazuje i M. Pekić (2018), prema kojoj je u Žilnikovim filmovima prisutno „razaranje reprezentativne slike društva napretka" (str. 43).

U crnotalasnom filmskom opusu Miroslava Antića značajno je uočiti prikazivanje socijalnih problema povezanih sa stanjem u Vojvodini tokom i neposredno nakon Drugog svetskog rata, u vezi sa korenitim sociopolitičkim promenama tokom stvaranja novog, socijalističkog društva. U filmu *Sveti pesak* (1968) razmotrena je tabuizirana tematika Informbiroa, dok je u ostvarenju *Doručak sa đavolom* (1971) iznet niz negativnih društvenih pojava, kao što su: različite zloupotrebe tokom obaveznog otkupa poljoprivrednih proizvoda od seljaka u Vojvodini, odbijanje meštana da predaju vlastima svoje proizvode, generalno nezadovoljstvo naroda novom „komunističkom" vlašću i slično.

Autor Jovan Jovanović takođe zavređuje važnu poziciju kada je reč o zastupljenosti socijalnih devijacija unutar crnotalasnih ostvarenja. Posebno treba pomenuti smele korake koje je Jovanović načinio u pionirskom prikazivanju nekih od vrlo kontroverznih pojava, poput: početaka omladinske narkomanije u SFRJ; ekspanzije jugoslovenskog kriminalnog podzemlja, ali i otpočinjanja saradnje jugoslovenskih službi bezbednosti sa pripadnicima kriminalnog miljea; nagoveštaja (antijugoslovenskih) terorističkih aktivnosti; suicidnih tendencija među mladima i dr. Takođe, bitno je uočiti i rane primere otvorenog kritikovanja i ismevanja vrednosti jugoslovenskog društva, nosilaca i simbola vlasti; zloupotreba u radu narodne milicije, „režimskih" medija i drugih kolektiva, kao i kritički odnos ka drugim negativnim društvenim pojavama unutar SFRJ. Primeri navedenih devijacija mogu se pronaći u njegovim dokumentarnim filmovima (*Studentski grad* [1964], *Kolt 15 GAP* [1971]), u kratkom filmu *Izrazito ja* (1969), a naročito u dugometražnom ostvarenju *Mlad i zdrav kao ruža* iz 1971. godine.

Konačno, u ovoj kratkoj analizi nužno mora biti pomenut i reditelj Lazar Stojanović, kako usled njegovog značaja za sam istorijat crnog talasa, tako i zbog društvenih posledica koje su nastale po njegov autorski rad i po njega lično kao stvaraoca. Uprkos činjenici da se Stojanović u crnom talasu okušao samo jednim dugometražnim filmom (svojim diplomskim radom *Plastični Isus* iz 1971), ovo ostvarenje bilo je dovoljno da prouzrokuje trajno sprečavanje prikazivanja za sebe, a krivičnu osudu i višegodišnju zatvorsku kaznu za svog tvorca. Što se tiče devijantnih aspekata, iako se u njemu susreću različite socijalnopatološke i psihopatološke pojave, pomenuti film je najpoznatiji po prisustvu antisistemskih devijacija – naročito u vezi sa ironično-podsmešljivim prikazivanjem Josipa Broza Tita i aluzijama na totalitarnu prirodu jugoslovenskog političkog sistema (Tirnanić, 2011; DeCuir, 2019; Radosavljević, 2019). Štaviše, usled svoje izrazito provokativne prirode, čitav film *Plastični Isus* zapravo se može posmatrati kao svojevrsna antisistemska devijacija po sebi.

Naravno, važno je naglasiti da su i drugi autori crnog talasa u većoj ili manjoj meri doprineli prikazivanju socijalno devijantnih pojava unutar svojih filmova. Međutim, prostorni limiti i osnovno tematsko usmerenje ovoga rada ne dopuštaju sistematsku socijalnopatološku analizu celokupne filmografije nastale u sklopu pomenutog kinematografskog pravca.

3. *Umetničko delo kao devijantna pojava ili radnja*: crni talas i cenzura

U pogledu odnosa između crnog talasa i cenzure, primetna je paradoksalna situacija vezana za disproporcionalnost broja formalno i broja neformalno (to jest, faktički) zabranjenih radova. Naime, jedino ostvarenje crnog talasa i jugoslovenske kinematografije uopšte koje je zvanično, sudskim putem zabranjeno, jeste omnibus film *Grad* iz 1963. godine (Radosavljević, 2019). Ovaj film zabranjen je rešenjem Okružnog suda u Sarajevu, dok je pomenuta sudska odluka ostala na snazi sve do 1990. godine (Tirnanić, 2011; Radosavljević, 2019). Međutim, čitav niz ostalih crnotalasnih filmova takođe je doživeo ograničenja ili isključenja prikazivanja, pri čemu su tehnike za postizanje toga cilja bile razli-

čite. Poznat način neformalne zabrane emitovanja filmova predstavljalo je tzv. „bunkerisanje", odnosno faktičko onemogućavanje javnog prikazivanja. Tako je, u okvirnom periodu od početka šezdesetih do početka sedamdesetih godina prošlog veka, više desetina filmova (uobičajeno se navodi broj od oko četrdeset ostvarenja [up. Radoslavljević, 2019]) bilo „sklonjeno u bunker", čime je postignuto da oni, efektivno, budu „zabranjeni bez zabrane" (Nikodijević, 1995). Od toga, neka onemogućavanja prikazivanja bila su kraćeg trajanja, dok su pojedina potrajala i više decenija. Kako bi se bolje razumela priroda označenog fenomena, no bez pretenzija ka formiranju sveobuhvatnog spiska i uz nužne ograde (up. Radosavljević, 2019, str. 311), u produžetku će kroz nekoliko primera ukratko biti predočene okolnosti i mehanizam primene opisanih metoda sprečavanja prikazivanja filmova crnog talasa.

Film D. Makavejeva *Parada*, snimljen 1962. godine, isprva nije bio dopušten za prikazivanje, sve dok iz njega nije uklonjeno nekoliko spornih kadrova. Znatno veću kontroverzu izazvao je još jedan Makavejevljev film, *W. R. – Misterije organizma* (1971), koji je, nakon dugogodišnje neformalne zabrane, jugoslovenskoj publici premijerno prikazan tek 1987. godine. Film Ž. Pavlovića *Povratak* snimljen je 1966, ali je odobren tek dve godine kasnije, nakon proširivanja dodatnim scenama i uvodnim segmentom. *Sveti pesak* od M. Antića iz 1968. godine „bunkerisan" je zbog osetljive političke tematike koju je obrađivao: konkretno, zbog tematike Informbiroa. Još jedno Antićevo ostvarenje, *Doručak sa đavolom* iz 1971, takođe je *de facto* zabranjeno za javno prikazivanje usled kritičkog odnosa prema posleratnoj jugoslovenskoj vlasti i Komunističkoj partiji. Povodom Žilnikovog filma *Rani radovi* (1969) vođen je sudski postupak u cilju njegove zabrane. Iako nije došlo do formalnopravnog *trajnog* zabranjivanja filma, on je ipak ostao u „bunkeru" sve do 1982. godine (Volk, 1986; Nikodijević, 1995; Tirnanić, 2011; DeCuir, 2019; Radosavljević, 2019).

Osim do sada navedenih tehnika, jedan od metoda suzbijanja filmova crnog talasa (ili makar njihove profanizacije i stigmatizacije njihovih autora) predstavljali su negativni napisi u medijima i u objavama različitih društvenih organizacija ili istaknutih pojedinaca. U takvim tekstovima, isticane su nepovoljne ocene kako o ideološkim, tako i o estetskim vredostima ovih filmova. Štaviše, kako navodi Radosavljević

(2019), formalni početak državnog obračuna sa filmovima crnog talasa nagovešten je upravo jednim takvim člankom objavljenim u listu *Borba* 1969. godine. Konkretnije, radilo se o članku Crni talas u jugoslovenskom filmu autora Vladimira Jovičića, tadašnjeg predsednika Komisije za ideološko delovanje CK SK Srbije (Radosavljević, 2019). Kada se, dakle, ima u vidu uticaj koji su neki od ovih tekstova ostvarili na oblikovanje negativne atmosfere oko fenomena crnog talasa, kao i pretpostavljena konekcija između pojedinih tekstova i mogućih direktiva iz tadašnjeg državnog i partijskog rukovodstva (Tirnanić, 2011; Radosavljević, 2019), praktične implikacije ovog neformalnog oblika cenzure postaju dodatno uočljive.

4. *Umetnik kao devijant*: sankcionisanje i stigmatizacija autora filmova crnog talasa

Među autorima crnog talasa, najdrastičnije sankcije pretrpeo je režiser Lazar Stojanović zbog svog kontroverznog diplomskog filma *Plastični Isus* iz 1971. Pomenuti film zaplenjen je tokom 1972, Stojanović je uhapšen u novembru iste godine, a naredne godine je osuđen na tri godine zatvora. To je ujedno bio i jedini primer krivičnopravne osude i zatvorske kazne izrečene nekom jugoslovenskom filmskom stvaraocu zbog njegovog profesionalnog rada. U vezi sa kontroverzama oko istog ostvarenja, režiser Aleksandar Petrović (koji je bio Stojanovićev mentor) bio je izbačen sa Fakulteta dramskih umetnosti Univerziteta u Beogradu, nakon čega je napustio državu i preselio se u Pariz, dok je Tomislav Gotovac, kao učesnik u filmu, takođe pretrpeo određene posledice (up. Nikodijević, 1995; Tirnanić, 2011; Radoslavljević, 2019).

Izjašnjavajući se o tada aktuelnoj profanizaciji njegovog filma *W. R. – Misterije organizma* i o aktivnoj ulozi koju su u tom procesu imali članovi udruženja boraca (SUBNOR), Dušan Makavejev je u jednom inostranom intervjuu dao izjavu koju su predstavnici pomenutog udruženja doživeli kao uvredu na svoj račun. Tim povodom, oni su protiv Makavejeva podneli krivičnu prijavu, optužujući ga za napad na tekovine NOB-a, kao i na vrednosti posleratne Jugoslavije i socijalističkog samoupravnog društva (Nikodijević, 1995). Okrivljeni ipak nije pretrpeo krivičnopravne posledice, budući da je postupak obustavljen već

posle prvog ročišta. Međutim, određenih formalnih sankcija po njega ipak je bilo – u februaru 1973. izbačen je iz Saveza komunista Jugoslavije (Radosavljević, 2019).

Pored sudskih postupaka vođenih protiv autora lično, treba istaći i pojavu suđenja koja su imala za cilj izdejstvovanje zabrane filma, pri čemu su, indirektno, na taj način bili pogođeni i tvorci spornog ostvarenja. Poznati primer sudskog postupka u kome je i autor bio uključen jeste suđenje povodom filma *Rani radovi* (1969) Želimira Žilnika, pod optužbom da je ovo ostvarenje dovelo do teške povrede društvenog i političkog morala (Tirnanić, 2011). Kao diplomirani pravnik, Žilnik je uzeo aktivno učešće tokom procesa, nastojavši da opovrgne iznete optužbe, u čemu je na kraju i uspeo (Tirnanić, 2011; DeCuir, 2019). Međutim, kako je već istaknuto, sam film je, ipak. godinama ostao u „bunkeru", dok je Žilnik izbačen iz Saveza komunista kao „anarholiberalni element" (DeCuir, 2019).

Zbog težine posledica i celokupnog konteksta, na ovom mestu se, uslovno, može pomenuti i sudski postupak koji je vođen protiv novosadskog umetnika Miroslava Mandića povodom njegovog autorskog teksta *Pesma o filmu* iz 1971. godine. Radilo se o tekstu koji je, između ostalog, sadržao i svojevrsni kratak scenario za film. Naslov spornog odeljka bio je „Josip Broz Tito", a sadržina scenarija glasila je: „Snimiti fotografiju Josipa Broza Tita u koloru u jednom kadru koji traje dva sata. Kamera je statična. Uz natpis kraj spiker kaže: Bio je to Josip Broz Tito." (Mandić, 2011). Ovaj gest izazvao je značajnu turbulenciju na domaćoj umetničkoj (ali i političkoj) sceni, a Mandić je osuđen na devet meseci zatvora (Denegri, 2013; Šuvaković, 2007; Matković, 2021). Okolnost da je tekst nastao upravo u periodu crnotalasne kinematografije, kao i činjenica da je novosadska scena neoavangardnih umetnika kojoj je Mandić tada pripadao po svom duhu u znatnoj meri delila senzibilitet navedenog filmskog pokreta, smatramo, daju dovoljno osnova da i suđenje ovom umetniku bude, barem načelno, okarakterisano kao deo šireg konteksta sankcionisanja autora crnog talasa. (Kao još jednu konekciju M. Mandića sa sferom kinematografije, treba pomenuti da je on jedno vreme bio urednik filmskog programa na novosadskoj Tribini mladih.)

Osim prikazanih primera autora koji su pretrpeli formalne (pravne) sankcije, treba imati u vidu da je značajno veći broj onih stva-

ralaca koji su doživeli različite neinstitucionalizovane oblike represije. Takve pojave kretale su se u rasponu od (neformalnog) zabranjivanja njihovih filmova, pa do različitih vidova stigmatizacije i onemogućavanja ili otežavanja uslova za dalji profesionalni rad (up. Tirnanić, 2011; DeCuir, 2019; Radosavljević, 2019). Usled opisane nepovoljne atmosfere, određeni broj autora napustio je državu, stekavši status jugoslovenskih reditelja (polu)disidenata (Radoslavljević, 2019). Kao drastičan primer koliko su posledice ovakvih neformalnih sankcija nekada mogle da budu ekstremne, može se izdvojiti tragična sudbina scenariste Jugoslava Đorđevića koji je u nastupu očaja oduzeo sebi život tokom snimanja filma *Jezero* (1950), ne mogavši da podnese sumnje i optužbe iskazivane na njegov račun (Radosavljević, 2019).

5. Ocena prirode i perspektive devijantnosti fenomena crnog talasa

Govoreći o tipovima socijalno devijantih pojava prezentovanih unutar filmova crnog talasa, primećuje se da je u njima prikazana većina devijacija koje se uobičajeno smatraju za *socijalnopatološke u užem smislu*. Tako mnoga ostvarenja crnog talasa prikazuju pojave kao što su: kriminalitet, bolesti zavisnosti, prostitucija, skitničenje, besposličarenje, prosjačenje, kockanje, pojedini oblici seksualnih devijacija, suicidno i autodestruktivno ponašanje. Međutim, filmovi crnog talasa dokumentuju i niz drugih društveno nepoželjnih pojava koje se mogu okarakterisati kao *socijalne devijacije u širem smislu*. Između ostalog, to su sledeći sadržaji: beskućništvo, nezaposlenost, loši uslovi života i drugi socijalni problemi; prikazivanje nezadovoljstva građana (opštedruštvenog, političkog, ekonomskog) i različitih asocijalnih/antisocijalnih tendencija s tim u vezi; loš položaj radničke klase, pojedinih nacionalnih manjina, specifičnih kategorija stanovništva (žene, deca, omladina), marginalizovanih grupa; problem diskriminacije; niz sistemskih devijacija (odnosno devijacija u funkcionisanju nosilaca vlasti i društvenopolitičkih institucija); antisistemske devijacije; raznovrsni socijalni problemi povezani sa epohom NOB-a i sa periodom neposredno nakon Drugog svetskog rata. Kako se može uočiti, ovi sadržaji su zaista veoma heterogeni po svojoj prirodi, što dokumentarnoj funkciji crnog talasa daje dodatnu vrednost.

U pokušaju dodatne klasifikacije socijalnih devijacija koje su predstavljene unutar crnog talasa, moguće je formirati različite dopunske tipologije. Prema kriterijumu prikazane tematike, možemo razlikovati: 1) *devijacije u oblasti privatnog života* i 2) *devijacije u javnoj (državnoj i društvenoj) sferi*. Što se tiče potonjih, moguće je razdvojiti: a) *devijacije u generalnom funkcionisanju društva ili pojedinih delova društva*; b) *devijacije u radu državno-upravljačkog aparata*. Dalje, prema istom kriterijumu mogu se prepoznati: 1) *urbane socijalne devijacije*; 2) *socijalne devijacije povezane sa ruralnim životom*. Takođe, osnovano je načiniti i hronološku podelu na: 1) *devijacije povezane sa periodom NOB-a*; 2) *devijacije u periodu neposredno nakon Drugog svetskog rata*; 3) *savremene devijacije* tadašnjeg jugoslovenskog društva (prevashodno tokom šezdesetih i samog početka sedamdesetih godina prošlog veka). U pogledu pristupa tretiranju socijalnih devijacija, moguće je razlikovati: 1) *realističko dokumentovanje socijalno devijantnih pojava, bez njihovog otvorenog kritikovanja*; 2) *eksplicitno kritikovanje socijalno devijantnih pojava u jugoslovenskom dru*štvu.

Što se tiče stepena nepoželjnosti ekranizovanja pojedinih tipova devijacija, primećuje se da je za jugoslovenske vlasti nesumnjivo najveća tabu tema crnog talasa bilo *političko odstupanje* od vladajućeg ideološkog kursa. Metodi takvog odstupanja mogli su biti različiti: od revizionističkog pogleda na predratnu i ratnu istoriju, odnosno na tekovine NOB-a, preko ukazivanja na manjkavosti vladajućeg režima i partijske strukture, sve do otvorene političke provokacije. Takođe, vrlo nepoželjnim očito se smatralo i prikazivanje različitih oblika *nezadovoljstva naroda* (naročito radnika i omladine) postojećim jugoslovenskim društvom i državom, kao što su: isticanje razočaranja, apatije, bezvoljnosti, besperspektivnosti pojedinaca ili čitavih grupa, ali i protestovanje, ispoljavanje revolta i bunta, sve do određenih oblika subverzivnih tendencija. Sa druge strane, stiče se utisak da prikazivanje socijalnih devijacija u užem smislu, iako sigurno nepoželjno, nije u tolikoj meri smetalo predstavnicima vlasti. Iz ovoga se izvodi zaključak da je prioritet državnih i partijskih institucija bila zaštita društveno-političkog poretka i vladajućeg režima, kao i očuvanje ideala optimizma, poleta i vere u sveopšti napredak jugoslovenskog socijalističkog društva. Nasuprot tome, čini se da su klasične socijalnopatološke pojave smatrane za manje opasne

sadržaje i da su, kao takve, više tolerisane, očigledno usled svog znatno slabijeg potencijala za direktno ugrožavanje vladajućeg sistema i vrednosti na kojima je on počivao.

Kako je pokazano, „crnotalasne socijalne devijacije" doživele su svoje ispoljavanje u različitim oblicima i dejstvom raznorodnih međuuticaja. U tom smislu, moguće je prepoznati tri osnovna modaliteta: 1. prikazivanje socijalno devijantnih pojava na filmu; 2. sam film shvaćen kao devijantna pojava; 3. autor filma kao devijant koji ugrožava vrednosti društveno-političkog poretka. Spram svega iznetog, nameće se objedinjujući zaključak o *multiperspektivnosti socijalne devijantnosti* povezane sa fenomenom crnog talasa. Iako slične tendencije verovatno mogu, u različitoj meri, biti uočene i u drugim svetskim kinematografijama, odnosno njihovim segmentima, sva je prilika da je jugoslovenski film crnog talasa, zbog naglašenog prisustva različitih devijacija na više nivoa, zbog specifičnosti i ekstremnosti pojedinih represivnih mera, kao i usled svih ostalih istaknutih posebnosti, jedan od boljih primera označenog kombinovanog fenomena devijantnosti.

Može se zaključiti da je crni talas odigrao značajnu ulogu u dokumentovanju socijalno devijantnih pojava prisutnih u tadašnjem jugoslovenskom društvu. Ovaj doprinos posebno dobija na težini kada se ima u vidu da se neretko radilo o onim devijacijama koje su inače bile prikrivane ili umanjivane, kako bi se očuvala slika Jugoslavije kao zemlje napretka oslobođene socijalnih problema. Otuda je osnovano primetiti da su filmovi crnog talasa, pored svoje primarne, umetničke funkcije, istovremeno i jedan od verodostojnijih sačuvanih dokumenata o najširem spektru socijalnih devijacija u jugoslovenskom društvu. Istovremeno, oni spadaju među najneposrednija svedočanstva o pomenutim devijacijama, imajući u vidu samu prirodu filma kao medija, odnosno njegov veliki potencijal za čuvanje i prenos informacija, kao i njegovu direktnost i životnost u prezentovanju vizuelno-zvučnih sadržaja. To posebno dolazi do izražaja u slučaju dokumentarnih filmova crnog talasa, u kojima prikazani sadržaji najviše zadržavaju svoju autentičnost. Usled svega navedenog, čini se opravdanim primetiti kako je fenomen crnog talasa, kao jedno od delotvornih sredstava dokumentovanja prisustva socijalnih devijacija u Jugoslaviji, važan činilac koji može značajno doprineti boljem razumevanju, ali i podrobnijem proučavanju etio-

loških i fenomenoloških aspekata socijalne devijantnosti u označenom periodu jugoslovenske istorije.

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SOCIAL DEVIATIONS AND THE "BLACK WAVE" OF YUGOSLAV CINEMATOGRAPHY: MULTIPERSPECTIVITY OF DEVIANCE

Summary: The main goal of this paper is to investigate various forms of social deviations that can be related to the phenomenon of the black wave of Yugoslav cinematography. The analysis is structured according to our general typology of possible models of connection between artistic and deviant contents (1. artist as a deviant; 2. presentation of deviance as a theme of a work of art; 3. work of art as a deviant phenomenon or action [Matković, 2017]). The author noticed complex and heterogeneus perspective of the relationship between the black wave and the sphere of social deviance, present at several different levels, which provided a basis for concluding on the multiperspectivity of deviance associated with the aforementioned artistic orientation. Among other conclusions, it was pointed out that the most energetic socio-political reaction was caused by the presentation of social deviations with political connotations, as well as deviations related to the dissatisfaction of various categories of Yugoslav society (i.e. those deviations that directly threatened the survival of the official state ideology and ruling regime), while the cinematographic treatment of socio-pathological phenomena in a narrower sense, although also undesirable, was still more tolerated, being subjected to repressions of lower intensity.

Key words: black wave, Yugoslav cinematography, social deviations, social pathology, art and deviance.

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SOCIAL DEVIATIONS AND THE YUGOSLAV BLACK WAVE: MULTIPERSPECTIVITY OF DEVIANCE

Abstract: This paper proposes to investigate various forms of social deviations that can be related to the Black Wave in Yugoslav cinema. The analysis is structured according to the author's typology of possible models of connection between artistic and deviant contents (1. artist as deviant; 2. presentation of deviance as a theme of an artwork; 3. work of art as a deviant phenomenon or act [Matković, 2017]). There is a complex and heterogeneous perspective of the relationship between the Black Wave and the sphere of social deviance manifest at several different levels that provide the basis for a conclusion that there is multiperspectivity of social deviance connected to this artistic orientation. Among other things, it is pointed out that the most energetic socio-political reactions were provoked by presentations of social deviations with political connotations and those related to the dissatisfaction of different categories of population in Yugoslav society that directly threatened the interests of the official state ideology and the ruling regime, while the cinematographic treatment of socio-pathological phenomena in the narrow sense being undesirable nonetheless, was still tolerated and subjected to repression of lower intensity.

Key words: Black Wave, Yugoslav cinema, social deviations, social pathology, art and deviance.

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1. The Black Wave and reality in socialist Yugoslavia

During the period of socialism the attitude of Yugoslav authorities towards contemporary art was not well-balanced. It varied significantly depending on the kind of artistic form exposed to judgement. Considering visual arts, for example, the attitude was characterized by the absence of immediate political control (Unterkofler, 2012). Thus authors active in this field enjoyed high degree of freedom, sometimes even institutional support, unless their activity was directly aimed at criticizing the social system and the political regime. On the other hand, literature and film production were subjected to much stricter control, in other words, to a regime of political censorship. Writers and film-makers, in contrast to their colleagues in the sphere of visual arts, were open to quite rigorous surveillance, some of them enduring serious sanctions because of their artistic work (Unterkofler, 2012; DeCuir, 2019; Radosavljević, 2019).

In Yugoslav cinema the *Black Wave* holds the position of its own, especially considering the area of social deviation. Black Wave is a label used for denoting one particular segment of post-war Yugoslav filmmaking developped within the so-called *new Yugoslav cinema* originating in the sixties and being active all the way to the beginning of the seventies (of the 20th century) when, by means of various repressive measures, it was brought to an end, thus terminating a specific creative, albeit heterogeneous, tendency in Yugoslav artistic film production. The key feature of these films was readiness to present social relations realistically, focusing on various social problems (national, political, moral etc.), including those considered taboo subjects in the Yugoslav society. This artistic movement for the first time featured marginalized social groups and outsiders (cf. DeCuir, 2019), or, as V. Radosavljević expressed it (2019) "people from the fringe of society" (p. 90); another unifying characteristic was striking pessimism as a sharp contrast to the prevalent optimistic mood in general film production and in society as a whole. As it is usually put, the mainstream film production of the period tended to show universal progress in Yugoslav society in the period of self-managing socialism often being used as open political propaganda (cf. Tirnanić, 2011; Radosavljević, 2019). Opposing this the Black

Wave presented a number of negative social phenomena realistically, ("the ugly side of life" [Radosavljevic, 2019, p. 89]), with marked pessimism, which were undoubtedly part of social reality in Yugoslavia. It is significant for our analysis that in a number of films many socially deviant aspects of behavior is presented in a narrower and broader sense of the term. Due to the characteristics mentioned, these films gained the status of controversial phenomenon within the Yugoslav society and, as a consequence, many of the authors who made them were stigmatized.

The relevance of the Black Wave for sociological, socio-pathological and criminological investigations is that the films of the movement can be connected to the phenomena of social deviations at different levels, not only considering themes and stories, but also in a broader context linking films and their authors to the community as a whole with sociopathological phenomena. The space in literature about the history of Yugoslav film, history of contemporary art in Yugoslavia, art criticism etc. (Volk, 1986; Petrović, 1988; Nikodijević, 1995; Gulding, 2004; Tirnanić, 2011; DeCuir, 2019; Radosavljević, 2019; Zlatić, 2020) dedicated to the phenomenon of Black Wave is sufficient to vouch for its importance in the context of contemporary culture. However, the absence of interpretation of these documents from the sociopathological point of view is immediately noticeable. Consequenly, this paper proposes to investigate the relation of art to various social deviations within the Black Wave of Yugoslav cinema.

At the beginning a typology of social deviations under study should be presented. All of them can be divided into two broad categories in the following way: 1) *social deviations in narrower sense*; 2) *social deviations in broader sense*. By the first one we denote sociopathological phenomena conventionally subsumed under this heading such as: criminal behavior, substance abuse, panhandling, loitering, idling, prostitution, gambling, suicide and attempted suicide (Jakovljević, Đukanović, & Živković 1984; Špadijer-Đinić, 1988; Bošković, 2020; cf. also Đurić, 1961; Lukić, 1976; Janković & Pešić, 1988; Najman, 1985; Milosavljević, 2003). Undoubtedly, there are many other social disorders defined differently by different authors, but the common denominator to all these is that they can be treated as social deviations or as social problems. Regarding general understanding of social deviation, social

disorder, social problems and other kindred notions in sociological, sociopsychological and criminological theories, it will be sufficient here to mention some of the classical authors in the field (among others: Brown, 1942; Elliot & Merril, 1950; Lamert, 1951; Bloch, 1952; Wooton, 1959; Cohen, 1959; Merton, 1961; Sutherland, Cressey, & Luckenbill, 1992). Especially significant to this investigation are the following negative social phenomena: powerty, unemployment, homelessness, aspects of social disfranchisement, problems related to disfunctional families or other disfunctional aspects of micro- and macrosocial environment. Moreover, there are those which may be termed "systemic deviations", that is, disorders in functioning of the socio-political system or some of its constitutive parts – exercise of power, misconduct of government representatives – and the opposite "antisystemic deviations", that is, questioning the values of the political system, endangering the social order and mistrusting the legitimacy of the Establishment (Matković, 2021). All these will be taken into account – in spite of being so heterogeneous in nature – subsumed under an all-encompassing label for the purposes of this essay: *social deviations in a broader sense.*

The structure of this analysis is based on the above mentioned general typology of socially deviant phenomena connected to art, which is the following: 1. the artist as deviant; 2. presenting deviancy as a theme in a work of art; 3. work of art as a deviant phenomenon or deviant act (Matković, 2017). We approach our problem from three perspectives: 1. deviancy as a theme of film; 2. the film as a deviant phenomenon; 3. the artist (the author) as deviant. We shall first examine socially deviant phenomena in plots and stories in films of some eminent authors of Black Wave.

2. Presenting deviance as a theme in a work of art: socially deviant phenomena in the films of the Black Wave movement

We focus on the work of well-known authors who influenced the development of Black Wave presenting different types of social deviance; in order to keep the scope of the examples under study managable, we survey the works of Živojin Pavlović, Aleksandar Petrović,

Dušan Makavejev, Želimir Žilnik, Miroslav Antić, Jovan Jovanović and Lazar Stojanović.

Director and screenwriter Živojin Pavlović, in the films he authored or co-authored[3] presented a number of socially deviant phenomena in the narrower sense and many other examples of social problems. He portrayed some of the characteristic deviations: different kinds of criminal behavior - thievery, violence, sexual assault, pimping, criminal association, juvenile delinquency – and connected social phenomena – alcoholism, prostitution, gambling, vagrancy etc.- social problems such as disfunctional families, resocialization - readaptation into the society of persons after serving long-time prison sentences - unemployment, homelessness and other problems relevant to a community. It is important to mention, in addition, staging contoversial issues regarding social and interpersonal relationships during the National Liberation Struggle (NOB).

Aleksandar Petrović, in his works[4], concentrated on various social deviations both in urban and rural settings. Most importantly, however, he captured deviance among some marginalized social groups, the Roma minority, for example, in one of his best films *Skupljači perja* (Feather Gatherers)(1967). In this film-noir one can observe a whole gamut of sociopathological manifestations: violence, theft, assault against women, brutality towards children and members of family, prostitution, vagrance, panhandling, sexual deviation – incest, pedophilia - family disorder, marginalization and disfranchisement of whole communities, national discrimination, treatment of minority groups etc.

Dušan Makavejev depicted an array of social deviations in his films such as *Parada* (The Parade) (1962), *Čovek nije tica* (A Man Is Not

[3] Kapi, vode, ratnici (Drops, Waters, Warriors) (1962); Grad (The Town) (1963); Povratak (The Return) (1966); Buđenje pacova (Awakening of the Rat) (1967); Kad budem mrtav i beo (When I am Dead and Pale) (1968); Zaseda (The Ambush) (1969); Crveno klasje (Red Grain Stalks) (1970).

[4] Dvoje (The Two of them) (1961); Dani (Days) (1963); Tri (Three) (1965); Skupljači perja (I Even Met Happy Gypsies [Feather Gatherers]) (1967); Biće skoro propast sveta (There will be the End of the World Soon) (1968); Majstor i Margarita (The Master and Margarita) (1972)

a Bird) (1965), *Ljubavni slučaj ili tragedija službenice PTT* (A Case of Love-affair or a Tragedy of a Postal Clerk) (1967), *Nevinost bez zaštite* (Innocence without Protection) (1968), *W.R. – Misterije organizma* (W.R. – Mysteries of the Organism) (1971). In all these films one can recognize brutality towards family members and partners, swindling, alcoholism as well as some sexual deviations. Other social problems such as marginalization, poverty and dreadful living conditions are exhibited. Moreover, in his films, a critique of communism and the socialist establishment is often present.

Želimir Žilnik figures prominently among the authors in this context. First of all, because he was one of the originators of a new genre - *docudrama*. In his documentary films he showed actual situations of deviant behavior, *true* examples from the fringes of society, often deliberately covered up by the establishment, which were, nevertheless, fragments of *reality* in socialist Yugoslavia. In films such as *Žurnal o omladini na selu zimi* (Journal about the Village-youth)(1967) *Nezaposleni ljudi* (Unemployed People) (1968), *Pioniri maleni, mi smo vojska prava, svakog dana ničemo ko zelena trava* (Little Pioneers)(1968), *Crni film* (The Black Film)(1971) the following deviations are documented: juvenile delinquency (in broadest sense of the term), theft, violence, mayhem, juvenile prostitution, vagrancy, panhandling, alcoholism, suicidal tendencies. Besides, other social problems are pointed out such as poverty, unemployment, disfunctional families, police brutality, misconduct of government officials. But Žilnik's full-feature film *Rani radovi* (Early Works)(1969) provoked the severest reaction of the public. The reason is that in this film Žilnik focused on socially undesirable, and for the then government extremely unpopular ocurrences in Yugoslav society and socio-political community, not so much on social deviations in narrow sense. This was pointed out by M. Pekić saying that Žilnik's films "destroy the representative picture of society in progress"(p. 49).

In his work Miroslav Antić represented social problems in Vojvodina during and immediately after the Second World War linked to radical sociopolitical changes in building a new socialist community. In his film *Sveti pesak* (Holy Sand) (1968) the focus was on the tabooed subject of the Cominform, while in *Doručak sa đavolom* (Breakfast with the Devil) (1971) on abuse during the imposition of compulsory

crop-purchase system in Vojvodina and the reluctance of peasants to deliver their produce to the state followed by general dissatisfacion with the new "communist" government.

Jovan Jovanović also devoted much space to social deviations. He was one of the pioneers in filming some very controversial themes such as the beginnings of juvenile drug addiction in a socialist country; the expansion of organized crime and the co-operation of officials with members of criminal organizations, foreboding (anti-Yugoslav) terrorist activities, sucidal tendencies among young people etc. One should notice as well early examples of the open criticism of authorities, ridiculing values of Yugoslav society, government officials and symbols of power, misconduct of people's militia, "propagandist" media and bad press. Such examples can be found in his documentary films (*Studentski grad* (Student City) [1974], Kolt 15 GAP [1971]), in a short film *Izrazito ja* (Distnctly I) (1969), and most prominently in his full-feature fim *Mlad i zdrav kao ruža* (Young and Healthy as a Rose)(1971).

Last but not least, in this short historical analysis the name of the director Lazar Stojanović must not be omitted, not just because of his importance in the development of the Black Wave movement, but also because of the far-reaching consequences his work and he, as an author, had to suffer. He made just one full-feature film *Plastični Isus* (Plastic Jesus) (1971 – actually, his graduation thesis) which was permanently banned from screening, and the author himself was sentenced to a prison incarceration. Apart from sociopathological and psychopathological motives, this film was best-known for its antisystemic deviation – an ironic caricature of Josip Broz Tito and allusions to the totalitarian nature of the Yugoslav political system (Tirnanić, 2011; DeCuir, 2019; Radosavljević, 2019). What is more, due to its openly provocative attitude, the whole film can be taken as an antisystemic deviation in itself.

Naturally, other authors of the black wave contributed to presenting socially deviant phenomena in varying degrees in their productions. However, limits of space and methodological reasons prevent us to make a full systematic sociopathological analysis of filmography made within the movement.

3. The work of art as a deviant phenomenon or act: the Black Wave and censorship

As far as the relation between Black Wave and censorship is concerned a paradoxical situation can be noticed, for there is a manifest disproportion as to the number of formally, by judicial decision, interdicted films and those informally (actually) banned. There is, namely, only one Black Wave film, and only one in Yugoslav cinema in general, banned by judicial decree and that is the omnibus film *Grad* (The City) from 1963 (Radosavljević, 2019). This film was banned from public screening by the decision of the district court in Sarajevo, which remained effective until 1990 (Tirnanić, 2011; Radosavljević, 2019). Nonetheless, while some Black Wave films got away with restrictions or conditionally, others were banned altogether. The techniques applied were diverse; one of the best known was "putting away to a bunker", that is, rendering public projection impossible for an indefinite period. Thus from the early sixties to the beginning of seventies some forty films – that is the usual count (Radosavljevic, 2019) – were put away and effectively "interdicted without interdiction" (Nikodijević, 1995), some for a short period, while others for many decades. The following examples serve to understand the phenomena better, by showing circumstances and exhibiting the mechanisms of these procedures of obstruction; they are not intended to give an exhaustive list and should, consequently, be taken with appropriate qualifications (cf. Radosavljević, 2019, p. 311).

Dušan Makavejev's *Parada*, made in 1962, was not allowed to be shown until some controversial parts were removed. However, his film *W.R. – Misterije organizma* (1971) was highly contested and put away for a long time, and was not premiered before the Yugoslav public until 1987. *Povratak*, the film of Živojin Pavlović, made in 1966, was shown only two years later, after being extended with additional scenes and an introductory segment. M. Antić's *Sveti pesak* (1968) was put away because it dealt with a politically painful subject – the Cominform. Yet another film of his *Doručak sa đavolom*, from 1971, was debarred from public screening due to its criticism of post-war Yugoslav government and the communist party. Žilnik's *Rani radovi* (1969) was brought to trial and despite of not being formally *permanently* banned, it was put

away to "bunker" until 1982. (Volk, 1986; Nikodijević, 1995; Tirnanić, 2011; DeCuir, 2019; Radosavljević, 2019).

One widespread method of obstructing Black Wave films and their authors were articles in the media, public announcements of state sponsored organizations and addresses of distinguished personalities. In these texts emphatically negative judgements about the films prevailed, both from ideological and aesthetic point of view. According to Radosavljević (2019) the state's settling old scores with Black Wave films began with a publication of the article *Crni talas u jugoslovenskom filmu* (Black Wave in Yugoslav cinema) by Vladimir Jovičić in the newspaper *Borba* in 1969. The author of the article was the then president of the Commission for Ideological Action in the Central Commitee of the Communist Party of Serbia (Radosavljević, 2019). One has, therefore, to take into account the impact of this and similar texts had on the negatively charged public opinion, the assumed connections between these and directives coming from the top structures of the state and the Communist Party (Tirnanić, 2011; Radosavljević, 2019), to draw a coclusion about the serious practical consequences of this informal manner of censorhip.

4. *The artist as deviant*: disciplining and discrediting the authors

Among the authors of Black Wave Lazar Stojanović was the one who suffered the most drastic measures for his film *Plastični Isus* (1971). During 1972 the film was confiscated; Stojanović was arrested in November and sentenced to a three year term of imprisonment. This was the only example of a criminal prosecution and sentence passed against a Yugoslav film-director for his professional activity. During the controversies surrounding the trial, the director Aleksandar Petrović, who was Stojanović's professor and mentor, was expelled from the Faculty of Drama Arts of Begrade University, left the county and moved to Paris. Tomislav Gotovac, the protagonist in the film, suffered consequences too (cf. Nikodijević, 1995; Tirnanić, 2011; Radosavljević, 2019).

In an interview given to a foreign journalist, Dušan Makavejev talking about the recent crusade against his film *W.R.- Misterije organizma* mentioned the active role the Association of Fighters in the National Liberation Struggle (SUBNOR) had in the course of events. The members of the association took Makavejev's words as a personal insult and sued him for attacking the heritage of National Liberation Struggle and the values of post-war socialist self-governing society of Yogoslavia (Nikodijevć, 1995). The accused, however, did not have to face the consequences, as the proceedings were cancelled after the first hearing. Yet, it was not all over; in February 1973 the film-director was expelled from the Communist Party.

On the other hand, the prosecution may not only be brought against the author personally, there were law suits whose purpose was to ban the film, and thereby, indirectly, of course, the author himself was targeted. A well-known example of a law suit in which the author himself was involved is the one brought against Žilnik's film *Rani radovi* (1969). He was facing accusations for comitting grave violations of social and political morality (Tirnanić, 2011). Žilnik, a lawyer himself, took active part in the proceedings trying to refute the accusations, in which he eventually succeeded. (Tirnanić, 2011; DeCuir, 2019). Nonetheless, the film remained put away for years; Žilnik, as an " anarchic-liberalist element", was expelled from the Communist Party.

In this context one may touch on the law suit brought against Miroslav Mandić, an artist from Novi Sad, apropos of his text *Pesma o filmu* (The song about film) from 1971. This text, among other things, contained a short film-scenario under the title "Josip Broz Tito". The gist of the scenario runs as follows: "Take a photograph of Josip Broz Tito in color, in one frame lasting for two hours. The camera is fixed. When inscription 'The End' appears on screen, the speaker says: This was Josip Broz Tito" (Mandić, 2011). This quip caused massive turbulence within the domestic artistic community, let alone the one it did in political circles. Mandić was sentenced to a nine month term of imprisonment (Denegri, 2013; Šuvaković, 2007; Matković, 2021).

There are two reasons sufficient, we think, to include the Mandić case into the broader context of prosecution of authors belonging to the Black Wave. Firstly, the article was written in the period when most

creative work of Black Wave was in the making and secondly, Mandić was part of a neo-avant-garde artistic circle in Novi Sad that had a similar artistic sensibility as the film-makers.

One must bear in mind here that there is an even greater number of artists who experienced various forms un-institutionalized repression; their films were banned, their reputation ruined, their work obstructed or made impossible (cf. Tirnanić, 2011; DeCuir, 2019; Radosavljević, 2019). Due to such unfavorable circumstances, many authors decided to leave the country and become (half) dissidents (Radosavljević, 2019). As an example of how relentless these informal pressures can be, the tragic life of screen-writer Jugoslav Đorđević may be invoked. Not being able to stand up to the accusations and insinuations (Radosavljević, 2019) he committed suicide during the shooting of the film *Jezero* (1950??).

5. The deviance of Black Wave: its nature and perspectives

When speaking about social deviation in the Black Wave films, one should immediately notice that most of them belong to the category of socio-pathological in a narrow sense of the term, including phenomena such as criminality, addiction, prostitution, loitering, idling, panhandling, gambling, forms of sexual deviations, suicidal and auto-destructive behavior. Moreover, in these films many other socially undesirable phenomena are documented, which can be categorized as *social deviation in a broader sense*, such as homelessness, unemployment, unbearable living conditions and other social problems, to these we may add: discontent of citizens (social, political, economic) and the various asocial and anti-social tendencies related to these; difficult position of the working class, of minorities, of marginalized groups, of women, of children and juveniles; problems of discrimination; systemic deviations of ruling groups and political institutions; anti-systemic deviations; different social problems related to National Liberation Struggle and to the post World War II period. These phenomena are very heterogeneous by nature proving the worth of the documentary realism of the Black Wave.

To make an additional classification of social deviations represented in the films, some supplementary typologies can be applied. Considering presented themes, it is possible to distinguish: 1) deviations in private life and 2) deviations in the public sphere (governmental and social). In the public sphere, it is possible to distinguish: a) deviations of social functioning in general; b) deviations of state-government apparatus. Considering location 1) urban social deviations and 2) rural social deviations. Considering chronology 1) related to the period of National Liberation Struggle; 2) related to the immediate post-war period; 3) contemporaneous deviations (during the sixties and the beginning of the seventies). Considering approach to the phenomena it is possible to distinguish: 1) documentary realistic representation of socially deviant phenomena without explicit critique; 2) explicit criticism of socially deviant phenomena in Yugoslav society.

But, from the point of view of establishment, the most undesirable deviation represented in these films was political divergence from the dominant ideological course. The ways of representing dissent were various; from a revisionist outlook on pre-war and war history, that is, achievements of the National Liberation Struggle and showing weaknesses of the establishment and party structures, even open political provocation. It was also unpleasant to show various forms of *people's discontent*, especially that of working class and youth, with Yugoslav society and state by emphasizing disappointment, apathy, disillusion and lack of perspective of individuals and whole groups, as well as protesting, exhibiting revolt and rage. On closer inspection, however subversive presenting deviations in the narrow sense it may seem, one comes to the conclusion that it did not bothered the establishment too much; probably because the priority of the institutions of the state and party was to protect the social order and the regime in power by fostering ideals of optimism, enthusiasm and belief in all-embracing progress of Yugoslav socialist society. These socio-pathological phenomena were considered less dangerous, and, what is more, even tolerable, obviously because their potential to threaten the political system and the values it was based on was minimal.

The "social deviations Black Wave style" manifested themselves in different forms and under heterogeneous influences. Three modali-

ties can be recognized: 1. representing socially deviant phenomena in the films; 2. the film itself understood as a deviant phenomenon; 3. the author as a deviant who threatens the political system. These provide the basis for a conclusion that *there is multiperspectivity of social deviance* connected with the Black Wave. Although there may have been similar tendencies in other artistic movements, Yugoslav Black Wave films, due to emphasized presence of different deviations on multiple levels, are one of the best examples of combined phenomenon of deviance.

It may be concluded the Black Wave made a significant contribution to documenting socially deviant phenomena in socialist Yugoslavia. This contribution gains even more importance if one bears in mind that these phenomena were often covered up and minimized in order to keep up the picture of Yugoslavia as a land of progress, free of social problems. There are good reasons to conclude that the Black Wave films, beside their primary artistic function, are one of the authentic preserved documents about the wide variety of social deviations in Yugoslav society. In the same time they represent compelling evidence of the deviations, due to the nature of the medium and its potential to preserve and convey information as well as its immediacy and vivacity in presenting audio-visual contents. This quality especially becomes prominent in the case of Black Wave documentary films in which the authenticity of the contents becomes verified. It is justified to notice that the phenomenon of Black Wave as one of the most efficient means to document the presence of social deviations in Yugoslav society is an important factor that may contribute to deeper understanding and more detailed exploration of etiological and phenomenological aspects of social deviation in this period of Yugoslav history.

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ODNOS IZMEĐU PERCEPCIJE PRAVEDNOSTI U ORGANIZACIJI I NAMERE ZA NAPUŠTANJE ORGANIZACIJE – METAANALITIČKA STUDIJA

Rezime: Cilj ove metaanalitičke studije jeste ispitivanje povezanosti distributivne i proceduralne pravednosti i namere za napuštanje organizacije kvantitativnom sintezom dostupnih empirijskih radova koji zadovoljavaju definisane kriterijume. Pretragom literature pronađeno je 126 radova, od kojih je 58 studija zadovoljilo sve definisane kriterijume. Ukupna veličina uzorka, kada se saberu sve studije koje su imale podatak o korelaciji između distributivne pravednosti i namere za napuštanje organizacije, iznosi 20068, dok je 17901 ukupna veličina uzorka studija koje su imale podatak o korelaciji između proceduralne pravednosti i namere za napuštanje organizacije.

Rezultati pokazuju da su distributivna i proceduralna pravednost značajno negativno povezane s namerom da se napusti organizacija i da je ta povezanost umerenog intenziteta. Ispitivanje efekta fioke pokazalo je da nije bilo pristrasnosti pri izboru studija koje će ući u postupak metaanalize. Budući da su rezultati pokazali da je veoma velika heterogenost između studija koje su ušle u postupak metaanalize, ispitan je i moderatorski efekat kategorije časopisa u kome su studije objavljene. Rezultati su pokazali da se ponderisane veličine efekata ne razlikuju s obzirom na kategoriju časopisa u kojima su studije objavljene.

Ključne reči: distributivna pravednost, proceduralna pravednost, namera za napuštanje organizacije

1. Uvod

Čovek u radnom okruženju provodi značajan deo svog vremena, a način na koji ga doživljava, oblikuje ne samo sliku pojedinca o organizaciji već i njegove emocijalne i bihevioralne reakcije. Jedan od veoma značajnih faktora koji determinišu odnos pojedinca prema organizaciji jeste i doživljaj pravednosti. Pravednost u organizaciji možemo definisati kao stepen u kome zaposleni procenjuju da su na poslu tretirani „fer" (Jakopec, 2015). Pojam organizacijske pravednosti uvodi Grinberg (Greenberg, 1987), dok prva istraživanja ovog koncepta pokreće Adamsova teorija jednakosti (1965). Ova teorija se odnosi na percepciju pravednosti raspodele resursa od strane poslodavca. Zasnovana je na konceptu socijalne komparacije po kome pojedinac svoj položaj vrednuje na osnovu poređenja ličnih ulaganja i ostvarenih rezultata sa ulaganjima i rezultatima drugih ljudi koji su na istim ili na sličnim pozicijama. Iz ove koncepcije nastao je pojam *distributivne pravednosti* koja se odnosi na procenu pravednosti raspoređivanja ishoda (Cropanzano & Folger, 1989). Zamerke Adamsovoj teoriji najviše su se odnosile na to što je bila usmerena isključivo na raspodelu sredstava, zanemarujući pri tome procedure i pravila koji su definisali ishode (Leventhal, 1980). Na temelju istraživanja u kontekstu pravosuđa, Tibo i Volker (Thibaut & Walker, 1975) utvrdili su da na procenu pravednosti u većoj meri mogu uticati procedure korišćene za određivanje ishoda nego ishod sam po sebi. Na bazi ovog saznanja uveli su pojam proceduralne pravednosti (prema Jakopec i Sušanj, 2014). U organizacionu psihologiju ovaj pojam prvi uvodi Leventhal (Leventhal, 1980), ukazujući da se proceduralna pravednost odnosi na procenu pravednosti postupaka za određivanje i raspoređivanje ishoda. On je definisao šest kriterijuma pravednih procedura: doslednost, nepristranost, tačnost, mogućnost ispravljanja grešaka, reprezentativnost i etičnost. Dvofaktorski model pravednosti, koji čine distributivna i proceduralna pravednost, dugo je bio dominantan u istraživanjima. Bies i Moag (Bies & Moag, 1986) dodali su ovom modelu *interakcijsku pravednost*, čime je definisan trofaktorski model pravednosti. Interakcijska pravednost se odnosi na kvalitet interpersonalnih odnosa sa zaposlenima tokom implementacije procedura (Colquitt, Conlon, Wesson, Porter, & Ng, 2001), odnosno ona podrazu-

meva način prenošenja informacija i tretiranja pojedinaca na koji utiču odluke poslodavca (Bies & Moag, 1986). Budući da je usko povezana sa procedurama, interakcijska pravednost se može smatrati proširenim modelom proceduralne pravednosti. Istraživanja pokazuju da zaposleni odgovornost za (ne)pravednu situaciju pripisuju različitim izvorima (Cropanzano & Prehar, 2001). Kao dva najčešća izvora (ne)pravednosti zaposleni vide neposrednog rukovodioca i organizaciju u celini. Brojna istraživanja (npr. Malatesta & Byrne, 1997; Masterson, Lewis, Goldman, & Taylor, 2000) pokazala su kako je percepcija pravednosti rukovodilaca povezana sa ishodima važnim za rukovodioce, kao što su poverenje u rukovodstvo i zadovoljstvo nadređenim, dok je percepcija pravednosti organizacije u celini povezana sa organizaciji bitnim ishodima, kao što su odgovorno organizaciono ponašanje i kontraproduktivno ponašanje (Jakopec & Sušanj, 2014). Istraživanja takođe upućuju na značaj koji percepcija pravednosti u organizaciji ima za mnoge lične i organizacione ishode kao što su: predanost organizaciji (McFarlin & Sweeney, 1992; Randall, & Mueller, 1995), identifikacija sa organizacijom (Olkkonen & Lipponen, 2006; Jakopec, Sušanj & Stamenković, 2013), stres (Judge & Colquitt, 2004), radne performanse (Fischer & Smith, 2004; Walumbwa, Cropanzano, & Hartnell, 2009), zadovoljstvo poslom (Al-Zu'bi, 2010), namera da se napusti organizacija (Paré & Tremblay, 2007; Loi, Hangyue & Foley, 2006; Cohen-Charash & Spector, 2001) i mnoge druge.

Namera za napuštanje organizacije predstavlja proces tokom koga pojedinac želi, planira i razmišlja o tome da napusti posao (Mobley, Griffeth, Hand, & Meglino, 1979). Veliki broj studija ukazuje da namera za napuštanje organizacije značajno korelira sa odlaskom iz organizacije (Griffeth, Hom, & Geatner, 2000; Lambert, Hogan, & Barton, 2001; Price, 2001). Odlazak dobrih radnika jedan je od najnepoželjenijih ishoda za poslodavca koji ga suočava sa direktnim troškovima poput gubitka investicija uloženih u čoveka koji je otišao, regrutacije i selekcije novih radnika i njihovih obuka (McShane, Williams, Schichor, & McClain, 1991). Pored direktnih troškova, kompanija se suočava i sa indirektnim, poput gubitka socijalnih mreža koje je zaposleni uspostavio, opterećenja zaposlenih koji su ostali u organizaciji, pada morala među zaposlenima i sl. (Lambert, 2001; Mitchell, MacKenzie, Styve, & i Gover, 2000; Stohr, Self, & Lovrich, 1992). Čak i ostanak zaposlenog kod kojeg

postoji namera za napuštanje organizacije često ima vrlo negativne posledice po performanse (Abbasi, Hollman, & Hayes, 2008).

Veliki broj studija ispitivao je vezu između percepcije pravednosti i namere za napuštanje organizacije. Istraživački izveštaji ovih studija ne daju jednoznačne rezultate u pogledu postojanja ove veze i njenog intenziteta. Rezultati nekih istraživanja upućuju na značajan i snažan intenzitet povezanosti distributivne i proceduralne pravednosti i namere za napuštanje organizacije (Cao, Chen, & Song, 2013; Khan & Habib, 2011), dok rezultati drugih studija ukazuju da nema značajne povezanosti među ovim varijablama (Hassan & Hashim, 2011; Tekleab, Takeuchi, & Taylor, 2005). Metaanalitička studija objavljena 2001. godine ukazuje na negativnu povezanost srednjeg intenziteta između distributivne i proceduralne pravednosti i namere za napuštanje organizacije (Cohen-Charash & Spector, 2001).

Cilj ove studije je ispitivanje povezanosti distributivne i proceduralne pravednosti i namere za napuštanje organizacije kvantitativnom sintezom dostupnih empirijskih radova koji zadovoljavaju definisane kriterijume. Iako veliki broj istraživanja upućuje da je percepcija pravednosti u organizaciji negativno povezana s namerom da se napusti organizacija, bez integracije nalaza ne može se nedvosmisleno zaključiti o intenzitetu te povezanosti. Interakcijska pravednost nije uključena u ovu metaanalitičku studiju s obzirom da je ona kao teorijski konstrukt proizašla iz proceduralne pravednosti i da se može smatrati njenim proširenim modelom.

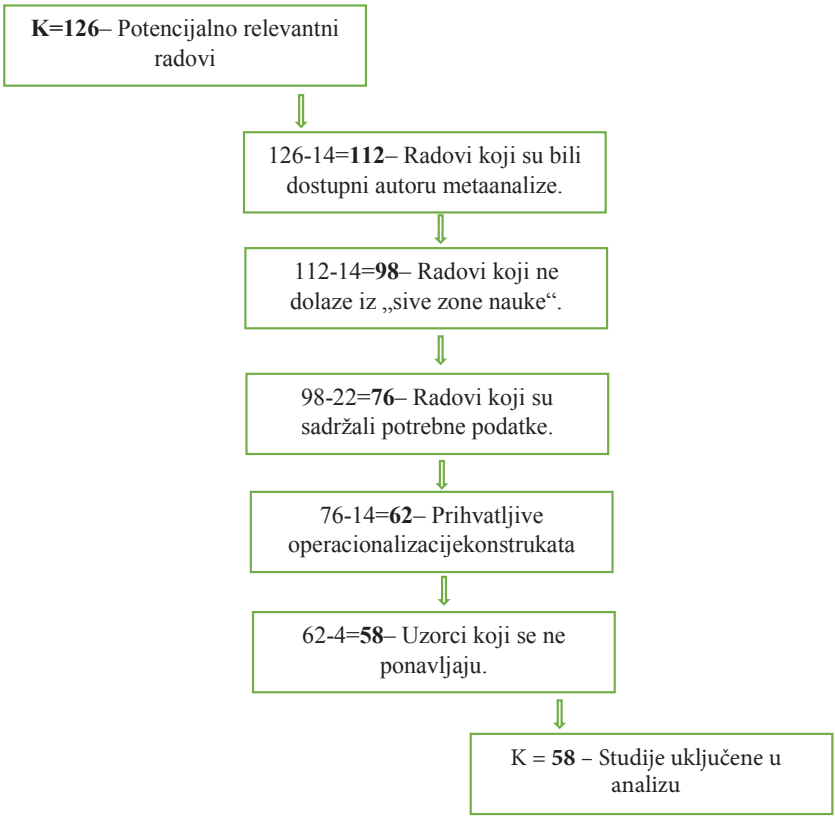
2. Metod

2.1. Pretraga literature i kriterijumi za uključenje radova u postupak metaanalize

Pretraga literature vršena je tokom marta 2020. godine. Osnovni kriterijum pretrage bio je da su radovi napisani na engleskom ili na srpskom/hrvatskom/bosanskom jeziku i da su dostupni u celini, kako bi mogao da se utvrdi metodološki kvalitet studije. Pretraga je započeta kucanjem sledećih ključnih reči, odnosno njihovih kombinacija na Google Scholaru: *organizational justice, turnover intentions, intention*

to leave (*organizacijska pravednost, namera da se napusti organizacija, fluktuacija*). Kucanjem ključnih reči na engleskom jeziku na Google Scholaru, pretražene su 22 strane, što je rezultiralalo sa 82 rada koji su se bavili ovim konstruktima, dok kada je pretraga vršena po ključnim rečima napisanim na srpskom/hrvatskom/bosanskom jeziku, nije se došlo ni do jednog rada koji dovodi u vezu ove konstrukte. Pretraga je vršena do 22. stranice. Nakon završene pretrage na Google Schoolaru, pristupilo se pretrazi drugih naučnih baza kao što su: Ebsco, Science Direct, Wiley Online Library i Hrčak Srce. Preko Ebsco baze podataka pronađeno je 30 potencijalno relevantnih radova koji su bili dostupni nakon unošenja ključnih reči. Nakon ove pretrage, pristupilo se pretrazi u bazi Science Direct u kojoj su tri rada odgovarala kriterijumima. U ovoj bazi pretražene su sve stranice koje su bile dostupne nakon pisanja ključnih reči u pretraživač. U bazi Wiley Online Library pronađeno je 14 radova koji bi mogli potencijalno da odgovaraju kriterijumima. Pretraženo je do 11. stranice, budući da već nakon osme nije bilo radova koji u naslovu sadrže ključne reči. Pretražena je i baza Hrčak Srce u kojoj nije pronađen nijedan rad koji bi po naslovu upućivao da se bavi ovom problematikom. Važno je napomenuti da se prilikom pretraživanja ovih baza nisu uzimali u obzir radovi koji su već prethodno pronađeni na Google Scholaru. Na ovaj način pronađeno je ukupno 126 radova. Kako bi se od pronađenih radova izabrali oni koji će ući u metaanalizu, definisani su dodatni kriterijumi: 1) Rad u celini mora biti objavljen na jeziku poznatom autoru metaanalize (engleski, srpski/hrvatski). Radovi koji imaju samo apstrakte objavljene na engleskom jeziku eliminisani su iz dalje analize s obzirom na to što nije bilo mogućnosti da se utvrdi metodološki kvalitet studije. Nakon eliminacije radova koje nije bilo moguće pronaći u celini, kao i radova napisanih na jeziku koji nije engleski, ostalo je 112 radova. 2) Studija mora biti objavljena u naučnom časopisu. Rezultati istraživanja objavljeni na konferencijama, kao i oni koji su deo master radova i doktorskih disertacija, eliminisani su iz dalje analize. Nakon eliminacije radova koji nisu zadovoljili ovaj kriterijum, u daljoj analizi ostalo je 98 radova. 3) Sledeći korak je podrazumevao eliminaciju radova koji nisu imali podatak o koeficijentu korelacije. Ukupno 22 rada nisu zadovoljila ovaj kriterijum i nakon njihove eliminacije ostalo je 76 radova. 4) Sledeći korak podrazumevao je da se eliminišu radovi

koji nisu imali adekvatne operacionalizacije. Ovim kriterijumom su eliminisani radovi koji su prikazivali samo podatke o korelaciji namere za napuštanje organizacije i kompozitnog skora organizacijske pravednosti; radovi koji nisu imali varijablu namera za napuštanje organizacije, već su imali podatke o realnom broju ljudi koji su napustili organizaciju; radovi koji su ispitivali nameru da se ostane u organizaciji. Ukupno je bilo 14 ovakvih radova. Njihovom eliminacijom ostala su 62 rada. 5) U poslednjem koraku eliminisana su četiri rada kod kojih je bilo preklapanja uzorka.



Grafik 1. Postupak uključivanja/isključivanja studija u metaanalizi

2.2. Varijable

Prema Leventalu (Leventhal, 1980), *distributivna pravednost* se može definisati kao procena o pravednoj raspodeli ishoda, nezavisno od toga da li su kao kriterijum za procenu pravednosti uzete potrebe, jednakost, doprinosi ili kombinacija ovih faktora. *Proceduralna pravednost* se može definisati kao percepcija proceduralne komponente sistema koji reguliše proces raspodele (Leventhal, 1980)). Distributivna i proceduralna pravednost operacionalizovane su postignutim skorom na upitnicima koji ispituju percepciju distributivne i proceduralne pravednosti u organizaciji (skale samoizveštavanja). Viši skorovi ukazuju na viši stepen percipirane distributivne i proceduralne pravednosti.

Namera za napuštanje organizacije definiše se kao svesna i namerna spremnost zaposlenog da napusti organizaciju u kojoj radi (Tett & Meyer, 1993). Prihvatljivim operacionalizacijama smatrali su se svi upitnici koji su ispitivali nameru za napuštanje organizacije, dok za ovu metaanalizu nisu bili prihvatljivi radovi u kojima su korišćeni instrumenti koji su merili stvarno napuštanje organizacije. Visok skor na upitnicima znači veću spremnost da se ode iz organizacije.

Kategorija časopisa – S obzirom na impakt faktor koji je časopis imao u trenutku objavljivanja studije, radovi su kategorisani na sledeći način: 1 – nema impakt faktor, 2 – M23, 3 – M22 i 4 – M21.

2.3. Uzorak

Ukupno 58 studija zadovoljilo je kriterijume da uđe u postupak metaanalize. Budući da su neke studije imale više od jednog uzorka, te da su neke studije sadržale samo podatke o korelaciji između distributivne pravednosti i namere za napuštanje organizacije, a neke samo podatke o proceduralnoj pravednosti i nameri za napuštanje organizacije, pregledom radova došlo se do podataka o 53 korelacija između distributivne pravednosti i namere za napuštanje organizacije i 58 korelacija između proceduralne pravednosti i namere za napuštanje organizacije.

Studije koje su ušle u postupak metaanalize objavljene su u periodu od 2001. do 2019. godine. U časopisima koji u trenutku objavljivanja nisu imali impakt faktor objavljeno je 78,4% studija, 6,9% studija objavljeno je u časopisima kategorije M23, 4,5% studija u časopisima kategorije M22, dok je 10,3% studija objavljeno u časopisima koji su kategorisani kao M21 u trenutku kada su objavljeni.

Iako su u metaanalizu uključeni samo radovi objavljeni na engleskom jeziku, studije su sprovedene u Evropi, Aziji, Australiji i Americi, te se može reći da postoji kulturna raznovrsnost uzorka.

2.4. Analiza podataka

Budući da je predmet ove analize utvrđivanje povezanosti između distributivne i proceduralne pravednosti i namere za napuštanje organizacije, kao mera veličine efekta korišćen je Pearsonov koeficijent korelacije. Kao ponder je korišćena veličina uzorka ispitanika, što je urađeno u programu SPSS izborom opcije Weight Cases/broj ispitanika. Dalja obrada podataka vršena je u statističkom programu Jamovi (Jamovi 1.1.9). S obzirom da su u ovu metaanalitičku studiju uključeni radovi rađeni na uzorcima iz različitih zemalja i da uzorci obuhvataju zaposlene u različitim industrijama (naftna industrija, prodaja, zdravstvo…), na različitim pozicijama (menadžerskim i izvršilačkim) i zaposlene različitih nivoa obrazovanja, ***očekuje se da je prikladnije primeniti model varijabilnih efekata***.

Za računanje procenta prave varijanse korišćena je metoda Hantera i ***Šmita***.

Za procenu heterogenosti korišćeni su parametri Kohranovog Q testa (indikator značajnosti heterogenosti) i I^2 statistika (procenjuje procenat ukupne varijabilnosti koji se može pripisati heterogenosti).

Da bi se utvrdilo da li je bilo pristrasnosti pri izboru studija koje će ući u postupak metaanalize, sprovedena je FSN analiza (Fail-Safe N Analysis) koja pokazuje koliko bi u metaanalizu bilo potrebno uključiti studija u kojima nije dobijena statistički značajna povezanost između

distributivne pravednosti i namere za napuštanje organizacije kako bi ukupna mera veličine efekta postala neznačajna. Pored rezultata analize, prikazan je grafik simetričnosti studija oko ukupne mere veličine efekta.

Kako bi se utvrdilo da li je kategorija časopisa u kome su studije objavljene značajan moderator odnosa između distributivne i proceduralne pravednosti i namere za napuštanje organizacije, sprovedena je analiza moderacije, pre koje je jednosmernom ANOVOM ispitano da li postoje značajne razlike između ponderisanih veličina efekta s obzirom na kategoriju časopisa u kojoj su studije objavljene.

3. Rezultati

U odeljku „Rezultati" prikazani su rezultati metaanaliza radova o povezanosti distributivne i proceduralne pravednosti i namere za napuštanje organizacije, analize heterogenosti uzorka, analize *efekta fioke* i analize moderacija.

U Tabeli 1 (prilog) prikazane su studije koje su zadovoljile kriterijume da uđu u metaanalizu.

Rezultati prikazani u Tabeli 2 ukazuju na značajnu povezanost distributivne pravednosti i namere za napuštanje organizacije. Ova korelacija je umerenog intenziteta (Cohen, 1992). Indikatori heterogenosti upućuju na opravdanost primene modela slučajnih efekata jer ukazuju na vrlo visoku heterogenost među studijama koje su ušle u postupak metaanalize.

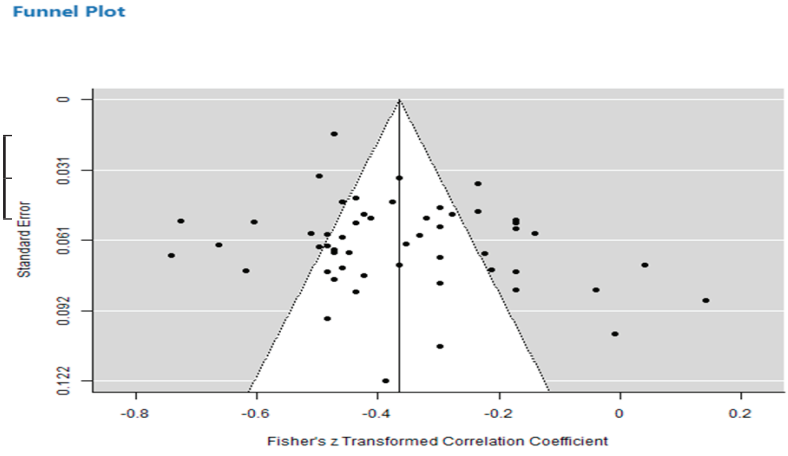
Značajan Kohranov Q test ($Q = 427{,}51$; $df = 52{,}00$; $p < 0{,}001$) ukazuje na heterogenost uzorka. Oko 91% ukupne varijabilnosti između veličina efekta dobijenih u istraživanjima uključenim u metaanalizu mogu se pripisati istinskoj heterogenosti među studijama, a ne grešci uzorkovanja (Huedo-Medina, Sa´nchez-Meca, Marı´n-Martı´nez, & Botella 2006). Obe statistike su osetljive na broj studija uključenih u postupak metaanalize, međutim s obzirom da je u ovu metaanalizu uključeno mnogo više od 20 studija koje se mogu uzeti kao donja granica prihvatljivosti za opravdanost tumačenja ovih statistika, njihove parametre je primereno interpretirati (Huedo-Medina et al., 2006).

Tabela 2. Rezultati metaanalize radova o povezanosti distributivne pravednosti i namere za napuštanje organizacije

	k	N	¯r	CID	CIG	Tau^2	I^2	Q
Distributivna pravednost	53	20068	-.36	-.41	-.32	.03	90,57%	427,51

N = veličina uzorka; ¯r = ponderisana prosečna veličina efekta; CID – donja granica intervala poverenja; CIG – gornja granica intervala poverenja; Tau^2 = prava varijansa; I^2 = procenat ukupne varijabilnosti koji se može pripisati heterogenosti; Q = indikator značajnosti heterogenosti.

Rezultati Fail – Safe N analize prikazani su u Tabeli 3. Prema Rozental (Rosenthal, 1991) – da ova mera ne bi ukazivala na efekat fioke, FSN bi trebalo da bude >= 5k + 10 (>= 5 * 53 + 10 = 275). U ovoj studiji je FSN = 44738, što ukazuje da nije bilo efekta fioke, odnosno da bi u metanalizu trebalo uključiti 44738 studija u kojima nisu dobijeni značajni efekti kako bi metastatistik bio neznačajan. Ovi rezultati idu u prilog zaključku da nije bilo pristrasnosti pri odabiru studija koje će ući u metaanalizu, što se može videti i na Grafiku 2 koji prikazuje da su studije uključene u metaanalizu u velikoj meri ravnomerno raspoređene oko vertikalne ose.



Grafik 2: Asimetrija studija o *povezanosti distributivne pravednosti i namere za napuštanje organizacije koje su uključene u metaanalizu*

Rezultati prikazani u Tabeli 4 ukazuju na negativnu, statistički značajnu povezanost umerenog intenziteta između proceduralne pravednosti i namere za napuštanje organizacije. Značajan Kohranov Q test ($Q = 635,15$; $df = 57,00$; $p < 0,001$), kao i vrednosti statistika I^2, ukazuju na izrazito visoku heterogenost među studijama koje su ušle u postupak metaanalize.

Tabela 4. Rezultati metaanalize radova o povezanosti proceduralne pravednosti i namere za napuštanje organizacije

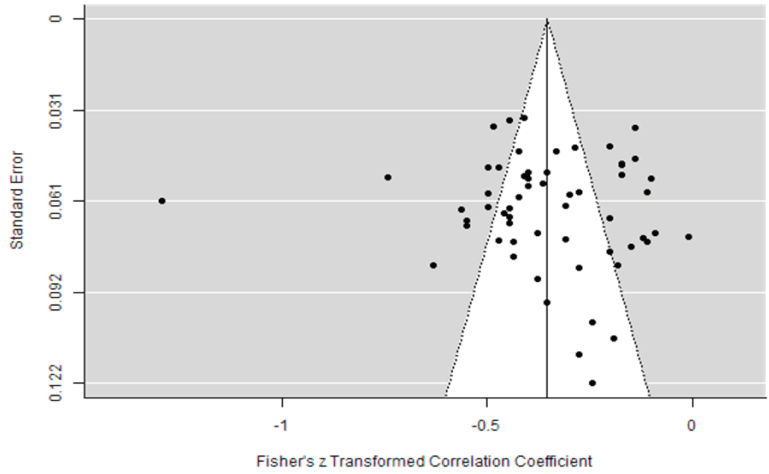
	k	N	¯r	CID	CIG	Tau^2	I^2	Q
Proceduralna pravednost	58	17901	-.35	-.41	-.30	.04	91,59%	635,15

N = veličina uzorka; ¯r = ponderisana prosečna veličina efekta; CID – donja granica intervala poverenja; CIG – gornja granica intervala poverenja; Tau^2 = prava varijansa; I^2 = procenat ukupne varijabilnosti koji se može pripisati heterogenosti; Q = indikator značajnosti heterogenosti.

Rezultati prikazani u Tabeli 5 pokazuju da nije bilo efekta fioke ni kada je reč o odabiru studija koje su ušle u postupak metaanalize sa ciljem da se proceni povezanost između proceduralne pravednosti i namere za napuštanje organizacije. Rezultati pokazuju da bi bilo potrebno uključiti 44346 studija u kojima nije dobijena značajna povezanost između proceduralne pravednosti i namere za napuštanje organizacije kako bi procenjena veličina efekta bila neznačajna (Tabela 5). Na Grafiku 3 može se videti da su sve studije, izuzev jedne, u velikoj meri ravnomerno raspoređene oko vertikalne ose. U studiji Kana i Habiba (Khan & Habib, 2011) dobijena je veoma visoka korelacija između proceduralne pravednosti i namere za napuštanje organizacije ($r = -.86$). Ova studija je objavljena u časopisu koji nema impakt faktor, te nije prošla recenziju kakvu prođu studije koje se objavljuju u časopisima sa impakt faktorom, pa jedan od razloga dobijene ovako visoke korelacije može biti i slabiji metodološki kvalitet studije. I pored ove studije, analiza asimetrije pokazuje izgled obrnutog levka, što ide u prilog nepristrasnosti pri uzorkovanju.

Tabela 5: Fail – Safe N Analiza

FSN	p
44346	<.001



Grafik 3: Asimetrija studija koje su uključene u metaanalizu

3.1. Analiza moderatorskog efekta

S obzirom na vrlo visoku heterogenost među studijama koje su ušle u postupak metaanalize, a koja nije posledica greške uzorkovanja, značajno je ispitati uticaj moderatorskih varijabli (Sanchez-Meca & Marin-Martinez, 2010). Kao potencijalna moderatorska varijabla prepoznata je kategorija časopisa u kome je studija objavljena (1 – nema impakt faktor, 2 – M23, 3 – M22, 4 – M21). Kako bi se utvrdilo da li se ponderisane veličine efekta razlikuju s obzirom na kategoriju časopisa u kome su studije objavljene, sprovedene su dve jednosmerne ANOVE (za distributivnu i proceduralnu pravednost).

Rezultati su pokazali da nema statistički značajne razlike između prosečne ponderisane veličine efekta za distributivnu pravednost u

odnosu na impakt faktor časopisa (F(3,49), = .68, p > 0.05), kao ni za proceduralnu pravednost (F(3, 54), = .03, p > 0.05). Rezultati vrednosti prosečne korelacije po grupama studija prema impakt faktoru prikazani su u Tabelama 6 i 7.

Tabela 6. Analiza ponderisane prosečne veličine efekta za distributivnu pravednost u odnosu na impakt faktor časopisa

Impakt faktor časopisa	Broj studija	$\bar{r}$
Bez IF	38	-.34
M23	3	-.40
M22	4	-.32
M21	8	-.33

Tabela 7. Analiza ponderisane prosečne veličine efekta za proceduralnu pravednost u odnosu na impakt faktor časopisa

Impakt faktor časopisa	Broj studija	$\bar{r}$
Bez IF	40	-.33
M23	5	-.33
M22	4	-.30
M21	9	-.33

Rezultati pokazuju da kategorija časopisa u kome je studija objavljena nema moderatorski efekat na veze između percipirane distributivne pravednosti i namere za napuštanje organizacije ($Tau^2 = .02$, p > .05), kao ni na vezu između proceduralne pravednosti i namere za napuštanje organizacije ($Tau^2 = .03$, p > .05).

4. Diskusija

Budući da rezultati dosadašnjih istraživanja nisu dali jednoznačne rezultate o prirodi i intenzitetu veze između distributivne i proceduralne pravednosti i namere za napuštanje organizacije (Cao et al, 2013; Khan & Habib, 2011; Hassan & Hashim, 2011; Tekleab et al, 2005), cilj ove metaanalitičke studije bio je da kvantitativno integriše

rezultate prethodnih studija kako bi se ispitao odnos između percepcije distributivne i proceduralne pravednosti i namere za napuštanje organizacije.

Rezultati pokazuju da su distributivna i proceduralna pravednost značajno, negativno povezane sa namerom da se napusti organizacija i da je ta povezanost umerenog intenziteta, što je u skladu sa rezultatima metaanalitičke studije Koena i Spektora (Cohen-Charash & Spector, 2001).

Ovi rezultati ukazuju da procena zaposlenih da su na poslu tretirani fer, da su procedure na osnovu kojih se raspoređuju ishodi pravedne, kao i raspodela samih ishoda, može imati značajne efekte na njihovu odluku da odu iz organizacije ili ostanu u njoj. Rezultati ove metaanalitičke studije mogu biti od velikog značaja za organizacije koje imaju visoku stopu fluktuacije jer upućuju na potrebu da se u organizacijama koje nameravaju da sačuvaju svoj kadar posveti pažnja kreiranju procedura koje će voditi pravednoj raspodeli ishoda.

Iako je utvrđeno da nije bilo pristrasnosti pri odabiru studija koje će ući u postupak metaanalize, ove rezultate treba uzeti sa oprezom zbog heterogenost među studijama koja je izrazito visokog intenziteta. Mada su u svim studijama ispitanici bili zaposleni, vrsta delatnosti kojom se bave, zemlje u kojima žive i rade, pol ispitanika, pozicija na kojoj su zaposleni i mnoge druge varijable mogu biti potencijalni moderatori efekta koji će njihova percepcija pravednosti u organizaciji imati na nameru da je napuste.

Rezultati su pokazali da se ponderisane veličine efekata ne razlikuju s obzirom na kategoriju časopisa u kojima su studije objavljene, što indirektno pokazuje da metodološki kvalitet studija nije imao značajne efekte na vrednosti ispitivanih metastatistika. Budući da se izvor kategorije časopisa nije pokazao kao značajan moderator, u narednim studijama bilo bi značajno dodatno analizirati potencijalne izvore heterogenosti.

Posmatrajući studije uključene u metaanalizu sa metodološkog stanovišta, može se zapaziti da su autori studija uključenih u metaanalizu koristili različite instrumente za merenje sva tri konstrukta što je, takođe, mogao biti jedan od faktora koji je doprineo tako visokoj heterogenosti.

Iako je analizirana pristrasnost pri odabiru studija koje su ušle u postupak metaanalize i zaključeno je da nije bilo efekta fioke, treba skrenuti pažnju da su u metaanalizu ***ušle samo studije objavljene na engleskom jeziku***, što ukazuje na pristrasnost u određenoj meri. Takođe, u metaanalizu nisu ušli diplomski i master radovi, doktorske disertacije, kao ni saopštenja sa konferencija, ***što je preporuka da se uradi kako bi se minimizirala mogućnost pristrasnosti pri*** uzorkovanju (Lau, Ioannidis, Terrin, Schmid, & Olkin 2006). Svakako, uključivanje ovakvih istraživanja u postupak metaanalize otvorilo bi pitanje i metodološkog kvaliteta studija koje nisu prošle postupak nezavisnih recenzija, te ostaje upitno da li je ovakav rizik isplativ.

Još jedno ograničenje ove metaanalize jeste to što najveći broj studija, čak 78,4%, objavljen u časopisima koji nemaju impakt faktor, što ostavlja mogućnost da neke od studija koje su ušle u metaanalizu ne zadovoljavaju najviše metodološke standarde.

Uz sva prikazana ograničenja i oprez pri tumačenju rezultata, ova metaanalitička studija ukazuje na značaj ove teme dajući preliminarne rezultate o povezanosti organizacijske pravednosti i namere za napuštanje organizacije. U informatičkoj eri, odlazak kvalitetnog i obučenog radnika ima veoma velike posledice po organizaciju. Ispitivanje faktora koji doprinose odluci da zaposleni napusti kompaniju može biti od neprocenjivog značaja za menadžere i organizacione psihologe čiji je posao da kreiraju ambijent koji će zadržati najkvalitetniji kadar. Nalazi ove i prethodnih metaanalitičkih studija ukazuju na opravdanost tretiranja organizacijske pravednosti kao značajnog faktora koji može determinisati odluku zaposlenog da napusti organizaciju.

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THE RELATIONSHIP BETWEEN THE PERCEPTION OF JUSTICE IN THE ORGANIZATION AND THE INTENTION TO LEAVE THE ORGANIZATION – META-ANALYSIS

Summary: The aim of this meta-analysis is to examine the connection between distributive and procedural justice and the intention to leave the organization by quantitative synthesis of available empirical papers that meet the defined criteria. 126 papers have been found through the search of the literature, out of which 58 studies met all the defined criteria. After summing up all studies that had data on the correlation between distributive justice and the intention to leave the organization, the total sample size equals 20068, while the total sample size of studies that had data on the correlation between procedural justice and the intention to leave the organization equals 17901.

The results show that distributive and procedural justice are significantly, negatively correlated to the intention to leave the organization and that this connection is of moderate intensity. Examination of the file-drawer effect has shown that there was no bias in the selection of studies which will be included in the process of meta-analysis. Since the results have shown that there is a very large heterogeneity between the studies that have entered the process of meta-analysis, the moderating effect of the category of the journal in which the studies have been published was examined as well. The results have shown that the weighted magnitudes of the effects do not differ with respect to the category of the journal in which the studies have been published.

Keywords: distributive justice, procedural justice, intention to leave the organization

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THE RELATION BETWEEN PERCEPTION OF JUSTICE AND THE INTENTION TO LEAVE THE ORGANIZATION – A META-ANALYTICAL STUDY

Abstract: The aim of this meta-analytical study is to examine the connection between distributive and procedural justice and the intention to leave the organization by quantitative synthesis of available empirical research that meet the defined criteria. Searching the literature 126 papers have been found, out of which 58 studies met all the defined criteria. After collecting all studies that had data on the correlation between distributive justice and the intention to leave the organization, the total sample size equaled 20068, while the total sample size of studies that had data on the correlation between procedural justice and the intention to leave the organization equaled 17901.

The results show that distributive and procedural justice is significantly negatively correlated with the intention to leave the organization and that this connection is of moderate intensity. Examination of the file-drawer effect has shown that there was no bias in the selection of studies which are included in the process of meta-analysis. Since the results have shown that there is a very large heterogeneity between the studies that have entered the process of meta-analysis, the moderating effect of the category of the journal in which the studies have been published was examined as well. The results have shown that the weighted magnitudes of the effects do not differ with respect to the category of the journal in which the studies have been published.

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Key words: Procedural justice, distributive justice, intention to leave the organization

Introduction

The way a person experiences her environment influences a picture she forms of it together with her own emotional and behavioral reactions. Work environment is no exception. One of the most important factors governing an individual's relation to her organization is her experience of justice. We may define justice in an organization as the employee's assessment of being treated equitably at work (Jakopec, 2015). The concept of organizational justice was introduced by Greenberg (Greenberg, 1987), but the first investigations of the concept were carried out in Adams' theory of equality (1965). This theory is about the perception of just distribution of resources by employers. It is based on the concept of social comparison according to which an individual values her position by comparing personal investment and achieved results with investments and results of other people occupying the same or similar positions. This conception gave rise to the notion of *distributive justice* referring to the assessment of just distribution of outcomes (Cropanzano & Folger, 1989). Adams' theory was criticized mostly because it was focused exclusively on the distribution of means, not taking into account procedures and rules leading to outcomes (Leventhal, 1980). In the context of judiciary matters research carried out by Thibaut and Walker (Thibaut & Walker, 1975) showed that the assessment of justice might be much more influenced by procedures adopted for accomplishing outcomes rather than outcomes themselves, consequently they introduced the notion of procedural justice (according to Jakopec and Susanj, 2014). In organizational psychology this concept was introduced by Leventhal (Leventhal, 1980), who pointed out that procedural justice refers to the assessment of practices leading to the distribution of outcomes. He specified six criteria to assess just procedures: consistency, impartiality, and precision, possibility of correcting mistakes, representativeness and morality. This two-factor model dom-

inated research for some time. Bies and Moag (Bies & Moag) added *justice-in-interaction* to this model thus presenting a three-factor model of justice. Justice-in-interaction refers to the quality of interpersonal relations among the employees during the implementation of procedures (Colquit, Conlon, Wesson, Porter & Ng, 2001); in other words, it covers ways of transmitting information and treating individuals controlled by the decisions of employers (Bies & Moag, 1986). Justice-in-interaction – being closely related to procedures – may be understood as an extended model of procedural justice.

Research shows that employees find that several sources may cause situations which they deem unjust (Cropanzano & Prehar, 2001). Most often they blame immediate supervisors or the organization as a whole. A number of researchers (e.g. Malatesta & Byrne, 1997; Masterson, Lewis, Goldman & Taylor, 2000) show that the perception of justice regarding supervisors is connected with outcomes that are important for supervisors such as confidence in and satisfaction with superiors, while the perception of justice regarding organizations is connected with outcomes important to organizations such as responsible behavior and counterproductive behavior (Jakopec & Susanj, 2014). Investigations point out the significance perception of justice has regarding personal and organizational outcomes such as commitment (loyalty) to the organization (McFarlin& Sweeney, 1992; Randall & Mueller, 1995), identification with the organization (Olkkonen & Lipponen, 2006; Jakopec, Susanj and Stamenkovic, 2013), stress (Judge & Colquitt, 2004), efficiency (Fischer & Smith, 2004; Wulumbwa, Cropanzano & Hartnell, 2009), satisfaction with the job (Al-Zubi, 2010), intention to leave the organization (Paré & Tremblay, 2007; Loi, Hang-yue & Foley, 2006; Cohen-Charash & Spector, 2001) and others.

The intention to leave the organization is a process during which an individual wishes, plans and deliberates about quitting the job (Mobley, Griffeth, Hand & Meglino, 1979). A number of studies show that the intention to leave the organization is significantly correlated with leaving the organization (Griffeth, Hom & Geatner, 2000; Lambert, Hogan & Barton, 2001; Price, 2001). The departing of good workers is one of the most unwelcome outcomes for employers, since one is forced to

face direct expenses such as loss regarding investments in the employee who left, recruiting and selecting new workers and the costs of their training (Mc Shane, Williams, Schichor & McClain, 1991). The company also faces indirect expenses, besides the direct ones mentioned, such as losing social networks established by the employee who left, burdening employees remaining, decline of morals among employees etc. (Lambert, 2001; Mitchell, MacKenzie, Styve & Grover, 2000; Stohr, Self & Lovrich, 1992). Even if the employee having intention to quit stays in the organization, consequences regarding her performances will be negative (Abbasi, Hollman & Hays, 2008).

A number of studies also investigated the relation between justice perception and intention to leave the organization. The reports from these investigations do not show unambiguous results regarding existence of this relation and its intensity. The results in some investigations show significant and intensive connections between perception of distributive and procedural justice and intension to leave the organization (Cao, Chen & Song, 2013; Khan & Habib, 2011), while others state that there is no significant relation between these variables (Hassan & Hashim, 2011; Tekleab, Takeuchi & Taylor, 2005). A meta-analytical study published in 2001 indicates that there is negative connection of medium intensity between distributive and procedural justice and intention to leave the organization (Cohen-Charash & Spector, 2001).

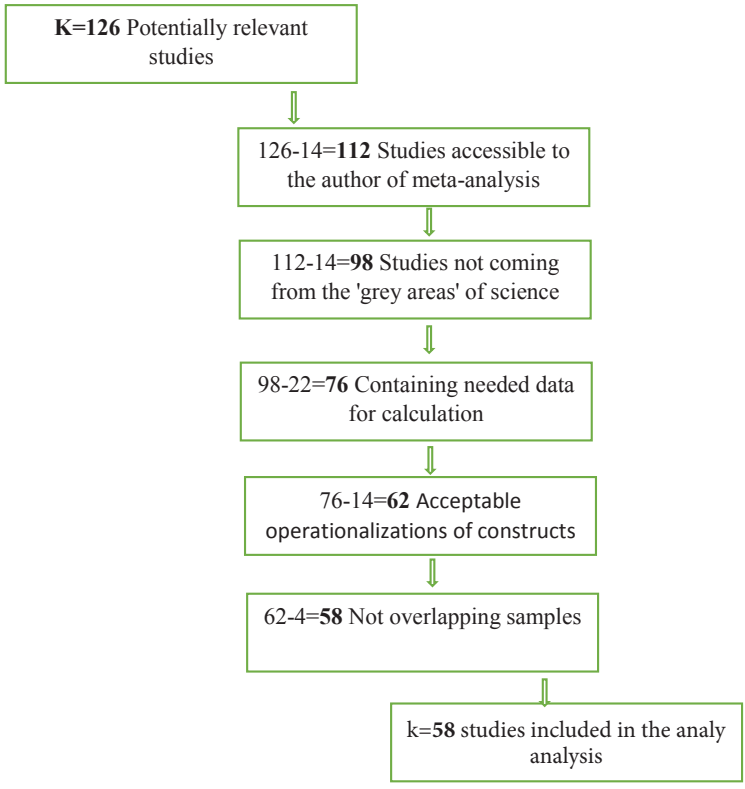
The aim of this study is to investigate the connections between distributive and procedural justice and intention to leave the organization by means of quantitative synthesis of available empirical studies satisfying defined criteria. Although many investigations indicate that justice perception is negatively connected with intention to leave the organization, without integrating the findings it is impossible to conclude unambiguously to the intensity of the connection. Justice-in-interaction is not included in this meta-analytical study, since as a construct it was developed from procedural justice and can be seen as an extended model of it.

The Method

The search through technical literature and the criteria for inclusion of scientific works in the process of meta-analysis

The search through the literature was carried out in March 2020. The basic criterion of the search was that the papers were written in English or in Serbian/Croatian/Bosnian and that they are available integrally, so that the methodological quality of the study can be established. The search started by typing in the following words, or combinations of them on Google Scholar: *organizational justice*, *turnover intentions*, *intentions to leave*. After typing the key words in English, 22 pages were searched and 82 papers got concerning these constructs; on the other hand, when key words were typed in Serbian/Croatian/Bosnian no results were found connecting these constructs. The search carried out up to 22 pages. Having finished the search on Google Scholar, we started searching other data bases such as Ebsco, Science Direct, Wiley Online Library and Hrčak Srce. Through Ebsco data base 30 potentially relevant papers are found; on Science Direct 3 papers met the criteria; in this base all the pages available after typing in the key words were searched. In Wiley Online Library base 14 papers were found that potentially satisfy the criteria; 11 pages were searched, but after page 8 no paper was found that would contain key words in the title. Hrčak Srce base offered no papers concerning this field of interest. It is important to notice that during searching these bases the papers already found on Google Search were not taken into consideration. Altogether 126 papers were found using this method. In order to make selection from the papers that would be subjected to meta-analysis some additional criteria were defined: 1) the paper as a whole has to be published in languages known to the author of meta-analysis (English or Serbian); papers that only have abstracts written in English are eliminated, since it is not possible to establish the methodological quality of the study. After elimination of the papers unavailable integrally and those not written in English, 112 papers remained. 2) The study had to be published in a scientific journal. The results of investigations made public on conferences, as well as those that are parts of master studies or doctoral dissertations are eliminated from further analysis. After eliminating studies that do

not satisfy this criterion 98 remained. 3) The next step eliminated works that lack data of correlation coefficient; in total 22 papers did not satisfy this criterion, so after eliminating those, 76 remained. 4) The fourth criterion eliminates works which lack adequate operationalization thus eliminating studies presenting only data on correlation between intention to leave the organization and the composite score of organizational justice; moreover, those that lack the variable for intention to leave the organization, having data regarding the actual number of people that had left instead, and finally, those that investigated intention to stay in the organization. In all, there were 14 of such kind and having eliminated these, 62 remained. 5) In the last step, four more were eliminated that had overlapping samples.



Graph 1The procedure of including/excluding studies in the meta-analysis

Variables

Leventhal (Leventhal, 1980) defines *distributive justice* as assessment of just (equitable) distribution of outcomes independently from the criteria of assessment such as needs, equality, contributions, or some combination of such factors. Procedural justice can be defined as perception of the procedural component of the system that regulates the process of distribution (Leventhal, 1980). Both distributive and procedural justice are operationalized by means of achieved score on questionnaires concerned with percieving distributive and procedural justice in organizations (self-reporting scales). Higher scores indicate higher level of percieved justice both distributive and procedural.

The intention to leave the organizarion is defined as the employee's conscious and intentional readiness to leave the organization in which he or she works (Tett & Meyer, 1993). Operationalizations are considered acceptable in case a questionnaire investigates the intention to leave the organization; in this meta-analysis the studies using instruments measuring actual leaving from organizations are considered unacceptable. Higher scores obtained in the questionnaire indicate increasing readiness to leave the organization.

The category of journals – Considering impact factor a journal had when publishing a paper, journals are categorized the following way: 1-no impact factor, 2-M23, 3-M22 i 4-M21.

The sample

58 studies in all satisfied the criteria to be included in the meta-analysis. Considering the fact that some studies had more than one sample and that some contained correlation between procedural justice and intention to leave the organization and some, on the other hand, between distributive justice and intention to leave the organization, by scanning the studies we collected 53 items of data about correlation between distributive justice and intention to leave the organization and 58 items of data about correlation between procedural justice and intention to leave the organization.

All the studies entering the procedure of meta-analysis are published between 2001 and 2019. 78.4% published in journals with no impact factor, 6.9% in journals of category M23, 4.5% in journals of category M22 and 10.3% in journals categorized as M22.

All the studies included in the meta-analysis were written in English, but the research was carried out in Europe, Asia, Australia and in the USA, hence one may claim that there is cultural diversity of the sample.

The analysis of data

Since the objective of this study is to establish the link between distributive and procedural justice and the intention to leave the organization, as the measure of effect magnitude Pearson's correlation coefficient is used; as weight, the sample size of examinees in SPSS program by choosing the option Weight Cases; further data analysis is carried out in Jamovi statistical program (Jamovi 1.1.9). This meta-analytical study is concerned with papers dealing with samples from different countries and these include persons working in different industries (oil industry, marketing, health service...), occupying different positions (management, executive...), having different educational experience. To use a variable effect model, therefore, seemed more appropriate.

For calculating percentage of real variance Hunter and Schmidt's method is used.

For assessment of heterogeneity the parameters of Cochrane's Q test (indicator of heterogeneity significance) and I^2 statistics (assessing the total percentage of total variability due to heterogeneity) is applied.

In order to ascertain whether there was bias in choice of studies entering the meta-analysis procedure FSN (Fail-Safe N Analysis) was carried out, which shows how many studies should have been included indicating lack of any statistically significant links between distributive justice and intention to leave the organization to render the total amount of effect magnitude insignificant. Next to the results of the analysis a simmetry graph is presented showing total measure of effect magnitude.

To ascertain whether the category of journal in which the studies are published is a significant moderator regarding the relation of distributive and procedural justice and intention to leave the organization, an analysis of moderation is carried out, before which, by means of one-directional ANOVA, it is tested whether there are significant differences between weghted effect magnitudes and the category of journal in which the paper was published.

The results

We are going to present here the results of meta-analysis of studies about the connection between distributive and procedural justice and intention to leave the organization, the analysis of sample heterogeneity, the analysis of *file-drawer effect* and the analysis of moderation.

On table 1 (see addendum) the papers are listed that satisfied the criteria to be accepted in the meta-analysis.

The results presented on table 2 indicate that there exists a significant connection between distributive justice and intention to quit. This correlation is of moderate intensity (Cohen, 1992). Heterogeneity indicators suggest that application of random effect model is justified, since they point to highly marked heterogeneity among the studies that entered the process of meta-analysis.

Significant Cochrane's Q test ($Q=427.51$; $df=52.00$; $p<0.001$) indicates heterogeneity of the sample. About 91% of total variability among the effect magnitudes obtained in research can be put down to true heterogeneity among the studies, rather than to a sampling mistake (Huedo-Medina, Sa´nchez-Meca, Marı´n-Martı´nez, & Botella 2006). Both statistics are sensitive to the number of studies entering the meta-analysis; however, since in this meta-analysis more than 20 papers is included – what can be considered as the lower limit of acceptability for justification of interpreting these statistics – their parameters are appropriate to be interpreted (Huedo-Medina et al., 2006).

Table 2. Results of meta-analysis of studies about the connection between distributive justice and intention to leave the organization

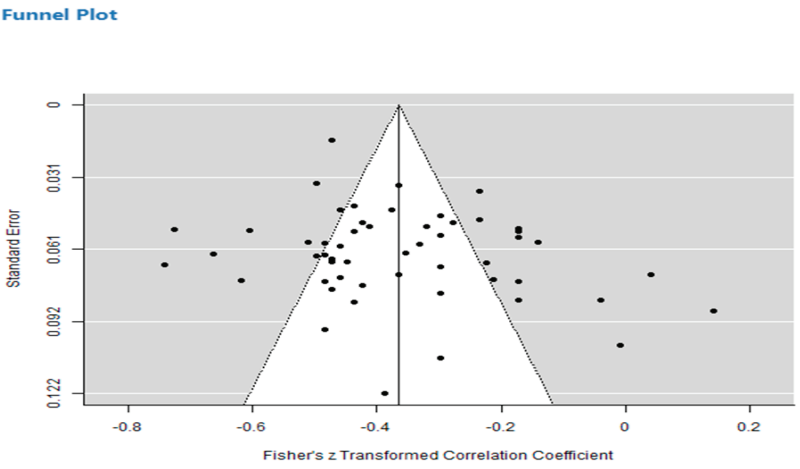
	k	N	¯r	CID	CIG	Tau²	I²	Q
Distributive justice	53	20068	-.36	-.41	-.32	.03	90.57%	427.51

N = sample magnitude; ¯r = weghted average effect magnitude; CID- lower limit of reliance interval; CIG-upper limit of reliance interval; Tau² = true variance; I² = percentage of total variability due to heterogeneity; Q = heterogeneity significance indicator.

The results of Fail – Safe N analysis are showed on table 3. According to Rosenthal (Rosenthal, 1991) to avoid file-drawer effect indication FSN should be >= 5k+10 (>= 5*53+10=275). In this study FSN=44738 and that shows that no file-drawer effect was present, in other words, the meta-analysis should have included 44738 studies showing absence of significant effects in order to render the meta-statistics insignificant. These results support the conclusion that there was no bias in the choice of studies to be included in this meta-analysis. This can be seen on graph 2 showing that the studies included are mostly uniformly distributed around the vertical axis.

Table 3: Fail – Safe N Analysis

FSN	p
44738	<.001



Graph 2: The asymmetry of studies about connection between distributive justice and intention to leave the organization included in the meta-analysis.

The results displayed on table 4 indicate negative statistically significane connection of moderate intensity between procedural justice and intention to leave the organization. Significant Cochrane's Q test ($Q=635.15$; $df=57.00$; $p<0.001$), as well as values of I^2 statistics, show exceptionally high level of heterogeneity among the studies that entered the process of meta-analysis.

Table 4. The results of meta-analysis of studies about the connection between procedural justice and intention to leave the organization

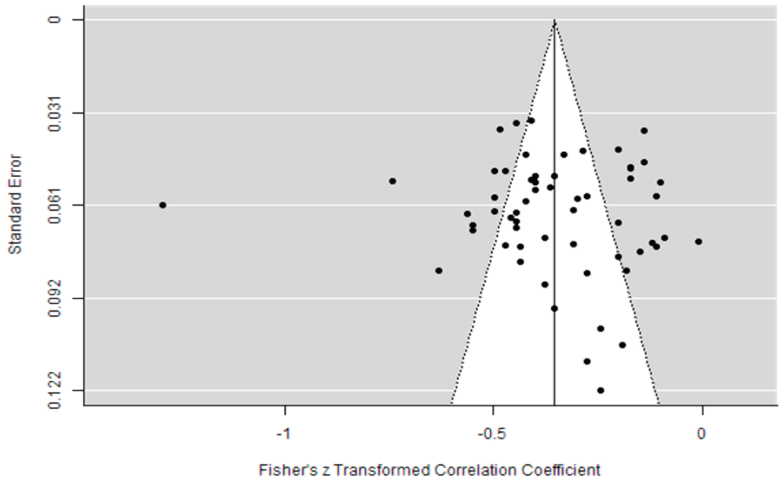
	k	N	¯r	CID	CIG	Tau^2	I^2	Q
Procedural justice	58	17901	-.35	-.41	-.30	.04	91.59%	635.15

N = magnitude of sample; ¯r = weghted average effect magnitude; CID- lower limit of reliance interval; CIG-upper limit of reliance interval; Tau^2= true variance; I^2 = percentage of total variability due to heterogeneity; Q = heterogeneity significance indicator

The results presented on table 5 show that there was no file-drawer effect in case of selecting studies about connection between procedural justice and intention to leave the organization entering the process of meta-analysis. The results indicate that 44346 studies had to be included showing no significant connection between procedural justice and intention to leave in order to render the assessment of effect magnitude insignificant (table 5). We can see on graph 3 that all the studies except one are uniformly distributed around the vertical axis. In the study of Khan and Habib (Khan & Habib, 2011) a very high correlation between procedural justice and intention to leave the organization is obtained (r=-.86). This study is published in a journal without impact factor and did not pass the reviews usual for journals with some impact factor, so it may be concluded that one of the reasons of such high correlation is perhaps a lower methodological quality of the study. Despite this difference, the analysis of asymmetry is in the shape of upside-down funnel indicating impartiality in sample selection.

Table 5: Fail – Safe N Analysis

FSN	p
44346	<.001



Graph 3: The asymmetry of studies included in meta-analysis

The analysis of moderation effect

Considering the very high level of heterogeneity among the studies that entered the process of meta-analysis – which were not a consequence of sample selection mistake – it is significant to investigate the influence of moderation variables (Sanchez-Meca & Marin-Martinez, 2010). As a potential moderation variable the category of journal which published the study has been recognized (1-no impact factor, 2 -M23, 3-M22, 4-M21). In order to establish whether weighted effect magitudes differ with respect to the category of journal that published the study two one-directional ANOVAS are carried out (for distributional and procedural justice).

The results show that there is no statistically significant difference between average weighted effect magnitude neither for distributive justice with respect to the impact factor of the journal($F(3, 49) = .68$, $p > 0.05$), nor for procedural justice ($F(3, 54) = .03$, $p > 0.05$). The results of values of average correlation by groups of studies according to impact factor are presented on tables 6 and 7.

Table 6. The analysis of weighted average effect magnitude for distributive justice with respect to the impact factor of the journal

Impact factor of the journal	The number of studies	$\bar{r}$
Bez IF	38	-.34
M23	3	-.40
M22	4	-.32
M21	8	-.33

Table 7. The analysis of weghted average effect magnitude for procedural justice with respect to the impact factor of the journal

Impact factor of the journal	The number of studies	$\bar{r}$
Bez IF	40	-.33
M23	5	-.33
M22	4	-.30
M21	9	-.33

The results show that there is no moderating effect of the category of journal that published the study neither on the relation between percieved distributive justice and intention to leave the organization (Tau^2=.02, p>.05), nor on the link between procedural justice and intention to leave the organization (Tau^2=.03, p>.05).

Discussion

The aim of this meta-analytical study has been to quantitatively integrate the results of previous studies which did not yield unambiguous results about the nature and intensity of the link between distributive and procedural justice and intention to leave the organization (Cao et al, 2013; Khan & Habib, 2011; Hassan & Hashim, 2011; Tekleab et al, 2005), in order to investigate this relation between justice perception and intention to quit.

The results show that procedural and distributive justice are significantly negatively connected with the intention to quit and that this connection is of moderate intensity; in this respect, it is consonant with the results of the meta-analytical study by Cohen and Spector (Cohen-Charash & Spector, 2001).

These results indicate that the employees' assessment of being treated fairly at work, of the procedures for distributing outcomes being equitable and of the distribution of outcomes themselves can have significant effects on their decision to leave or stay in the organization. These results may be significant, moreover, for those organizations which have high rate of fluctuation, because they suggest that there is a need – especially in the organizations resolved to preserve their personnel – to focus on creating procedures conducive to just distribution of outcomes.

It was established that there was no bias in the selection of studies to enter the process of meta-analysis, however, these results should be taken with some caution because of the marked intensity of heterogeneity among the studies. All the examinees in these investigations are on the active list, but the kind of work they do, the countries where they live and work, their gender, the positions they occupy and many other

variables can be potential effect moderators of their justice perception in the organization they intend to leave.

The results have showed that weighted effect magnitudes do not differ with respect to the category of journal in which studies were published, indirectly suggesting that the methodological quality of the studies had no significant effects as to the values of investigated meta-statistics. Since the source of journal category has not appeared as a significant moderator, it would be significant to study potential sources of heterogeneity further.

From the methodological point of view it can be observed that the authors of the studies that entered the process of meta-analysis used various instruments for measuring the three constructs, which could be a contributing factor to such a high level of heterogeneity.

Although bias in the selection process of studies that were accepted for meta-analysis has been analyzed and it has been concluded that there was no file-drawer effect, it should be noticed that only sudies written in English were accepted in the meta-analysis hinting at some presence of bias after all. Moreover, master theses, doctoral dissertations and conference reports did not enter in the process of meta-analysis, which would be a good thing to do in some future investigation – to avoid bias in sample selection (Lau, Ioannidis, Terrin, Schmid, & Olkin 2006). In any case, accepting these kinds of investigations would open the question of methodological standards of studies not subjected to independent reviews and that remains controversial.

One more limitation of this study needs to be mentioned. Most of the works analysed - 78.4% - were published in journals which do not have impact factor; therefore, there remains a possibility that some studies accepted in the meta-analysis do not satisfy the highest methodological standards.

In spite of limitations and cautonary remarks in interpreting results, this meta-analytical study reveals the importance of its subject by showing preliminary results considering connection between organizational justice and intention to leave the organization. In our day, going away of highly qualified and well trained personnel has serious consequences for an organization. Investigating factors influencing the

decision of emloyees to leave the company can be of considerable significance for managers and organizationa psychologists whose job is to create a favorable ambience to retain most qualified workers. The results of this and previous meta-analytical studies indicate that organizational justice should be approached as a significant factor that may determine the decision of the empoyee to leave the organization.

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ADDENDUM: STUDIES INCLUDED IN THE META-ANALYSIS

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ODNOS IZMEĐU PERCEPCIJE PRAVEDNOSTI U ORGANIZACIJI I NAMERE DA SE NAPUSTI ORGANIZACIJA – METAANALITIČKA STUDIJA

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Apstrakt: Cilj ove metaanalitičke studije je ispitivanje povezanosti distributivne i proceduralne pravednosti i namere za napuštanjem organizacije kvantitativnom sintezom dostupnih empirijskih radova koji zadovoljavaju definisane kriterijume. Pretragom literature pronađeno je 126 radova, od kojih je 58 studija zadovoljilo sve definisane kriterijume. Ukupna veličina uzorka kada se saberu sve studije koje su imale podatak o korelaciji između distributivne pravednosti i namere za napuštanjem organizacije je 20068, dok ukupna veličina uzorka studija koje su imale podatak o korelaciji između proceduralne pravednosti i namere za napuštanjem organizacije iznosi 17901.

Rezultati pokazuju da su distributivna i proceduralna pravednost značajno negativno povezane sa namerom da se napusti organizacija i da je ta povezanost umerenog intenziteta. Ispitivanje efekta fioke pokazalo je da nije bilo pristranosti pri izboru studija koje će ući u postupak metaanalize. S obzirom da su rezultati pokazali da je veoma velika heterogenost između studija koje su ušle u postupak metaanalize, ispitan je i moderatorski efekat kategorije časopisa u kome su studije objavljene. Rezultati su pokazali da se ponderisane veličine efekata ne razlikuju s obzirom na kategoriju časopisa u kojima su studije objavljene.

Ključne reči: distributivna pravednost, proceduralna pravednost, namera da se napusti organizacija

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UTICAJ DONESENIH DRUGOSTEPENIH PORESKIH UPRAVNIH AKATA NA BUDŽET REPUBLIKE SRBIJE

Rezime: Poreska uprava, kao jedan od najznačajnijih državnih organa koji učestvuje u procesu ubiranja javnih prihoda, između ostalih funkcija koje obavlja, ima i nadležnost u donošenju poreskih upravnih akata kojima utvrđuje visinu poreske obaveze koju su poreski obveznici dužni da plate. Poreski obveznici, sa druge strane, traže pak način za poresku evaziju utvrđenog poreza ili tragaju za načinom na koji bi poresku obavezu smanjili u što većoj meri. U tom procesu, aktivnosti i jedne i druge strane imaju uticaj na budžet u smislu visine naplaćenog poreza. U radu su data prava i obaveze Poreske uprave u delu koji se odnosi na donošenje poreskih upravnih akata, sa akcentom na drugostepeni poreski upravni postupak jer on direktno utiče na visinu naplaćenih prihoda. Takođe, data su i objašnjenja koja se tiču poreskih obveznika u procesu donošenja poreskih upravnih akata, sa fokusom na institut žalbe u tom postupku. Prikazani su i dostupni podaci na osnovu kojih su i izvedeni pojedini zaključci.

Ključne reči: poreski postupak, budžet, drugostepeni organ, lokalna samouprava, žalba

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1. Uvod

Predmet rada je analiza uticaja upravnih akata koje donosi Poreska uprava na javne prihode. Rad je sačinjen od šest delova u kojima je definisana nadležnost Poreske uprave i pravnih normi na kojima svoj rad bazira. Između ostalog, akcenat je dat i na instit žalbe, čiji se efekti mogu negativno odraziti na prihode bužeta. Pored definisanja nadležnosti organa Poreske uprave u trećem delu rada, u četvrtom su prikazani rokovi postupanja tih istih organa u postupku odlučivanja po žalbi, dok peti deo govori o negativnim posledicama u slučaju prekoračenja tih rokova. Šesti deo rada bavi se mehanizmima i pravnim lekovima kojima stranka, nezadovoljna drugostepenim upravnim aktom, može pribeći.
Pored dobrovoljnog izmirivanja poreskih obaveza koje je poreski obveznik utvrdio samooporezivanjem (Radičić & Raičević, 2011), poreska administracija donosi rešenja u postupku utvrđivanja poreske obaveze, u postupku kontrole poštovanja poreskih propisa i pravilnog utvrđivanja poreske obaveze (Milojević, 2010) od poreskog obveznika (Dobos & Takács-György, 2020, str. 78) i u postupku prinudne naplate utvrđenih, a neizmirenih poreskih obaveza. Rešenje poreskog organa može se pobijati žalbom u drugostepenom postupku i upravnim sporom. Žalba je redovno pravno sredstvo kojim stranka može da osporava zakonitost ili pravilnost rešenja donetog u prvostepenom poreskom upravnom postupku kojim su mu utvrđena prava i obaveze. Stranka nezadovoljna prvostepenim rešenjem inicira žalbom drugostepeni postupak. Pravo na žalbu imaju stranke u postupku – Poreska uprava i poreski obveznik, odnosno ostali poreski dužnici (Lazić, 2018, str. 11). Kada je o pravima ili obavezama odlučeno ožalbenim rešenjem, lice može podneti žalbu kao i svako drugo lice koje u postupku ima interes (kao što je poreski jemac ili lica odgovorna po osnovu sekundarne poreske obaveze).

2. Nadležnost državnih organa u drugostepenom poreskom upravnom postupku

U ovom delu će biti reči o pravnim normama kojima je Poreskoj upravi dato pravo da odlučuje o poreskim upravnim aktima, o vremenskim odrednicama početka tog prava, kao i organizaciji Poreske uprave.

Ustav Republike Srbije („Službeni glasnik RS“, broj 98/2006 – nadalje: Ustav) garantuje dvostepenost u upravnim postupcima. Odredbom člana 198 stav 1 Ustava propisano je da „Pojedinačni akti i radnje državnih organa, organizacija kojima su poverena javna ovlašćenja, organa autonomnih pokrajina i lokalne samouprave, moraju biti u skladu sa zakonom.“ Ustavom, i to članom 198 stav 2, predviđeno je „O pojedinačnim aktima kojima se odlučuje ili definiše pravo ili obaveza, njihova se zakonitost može preispitivati ili utvrđivati pred sudom i to u upravnom sporu.“

U skladu sa Zakonom o ministarstvima, konkretno članom 3 („Službeni glasnik RS“, br. 128/20), nadležni organ u postupcima po žalbi na prvostepena poreska rešenja, doneta u postupku utvrđivanja, kontrole i naplate od Poreske uprave i lokalne poreske administracije, jeste Ministarstvo finansija – Sektor za drugostepeni poreski i carinski postupak (u daljem tekstu: Sektor).

Do 30. juna 2017. godine, a u skladu sa tadašnjom pravnom normom objavljenom u Zakonu o poreskom postupku i poreskoj administraciji („Službeni glasnik RS“, br. 80/02, 84/02, 23/03, 70/03, 55/04, 61/05, 85/05, 62/06, 62/06, 61/07, 20/09, 72/09, 53/10, 101/11, 2/12, 93/12, 47/13, 108/13, 68/14, 105/14, 91/15, 112/15 i 15/16), bilo je na snazi organizaciono rešenje kojim je utvrđena nadležnost Poreske uprave za postupanje u drugostepenom poreskom upravnom postupku. To je značilo da se u istom organu donosilo i prvostepeno rešenje, a u slučaju žalbe i drugostepeno. Članom 25, stav 11 izvršene su izmene i dopune Zakona o poreskom postupku i poreskoj administraciji i objavljene u „Službenom glasniku RS“ 108/2016. Njima je propisano da će od 1. jula 2017. godine nadležni organ za postupanje po žalbi na rešenja Poreske uprave i lokalne poreske administracije, u delu izvornih javnih prihoda, biti osnovna unutrašnja organizacijska jedinica Ministarstva finansija, tj. Sektor za drugostepeni i carinski postupak. Ovakvo rešenje je pre svega imalo za cilj otklanjanje odlučivanja u istom organu, u poreskim upravnim stvarima i u prvostepenom i u drugostepenom postupku (Nikodijević, 2019, str. 119), a imajući u vidu pri tome pojavu da su rešenja u prvostepenom i drugostepenom postupku donosila ista lica zaposlena u filijalama i ekspoziturama, tj. u organizacionim jedinicama Poreske uprave.

Sektor je nadležan za: „Rad i obradu žalbi podnesenih na rešenja koja su donesena u organima Poreske uprave i poreskih organa u lokalnim samoupravama u prvom stepenu odlučivanja. Organi Sektora izrađuju rešenja i dostavljaju odgovore sudskim organima kada se pred sudom pripremaju i izrađuju rešenja za primenu vanrednih pravnih sredstava i odgovora na tužbe nadležnom sudu protiv rešenja donetih u poreskom i carinskom upravnom postupku. Odlučuje po pravnim lekovima uloženim protiv carinskih upravnih akata carinarnica donetih u prvostepenom carinsko-upravnom postupku koji se odnose na primenu propisa iz oblasti carinskog sistema. Izrađuje rešenja u izvršenju presuda suda nadležnog za rešavanje upravnih sporova i vrši analizu poresko-upravne sudske prakse u primeni propisa iz svog delokruga.“ (Informator o radu Ministarstva finansija, 2020, decembar). Sektorom rukovodi pomoćnik ministra.

U organizacionom smislu, Sektor ima sistematizovana četiri mesta na poslovima koordinacije u drugostepenim poreskim upravnim predmetima. Dalja organizacija podrazumeva primenu teritorijalnog principa organizovanja, tj. četiri odeljenja za drugostepeni poreski postupak i to u Beogradu, Novom Sadu, Kragujevcu i Nišu.

3. Institut žalbe u poreskom postupku

Ovaj deo rada objašnjava mogućnost stranke da u postupku utvrđivanja poreske obaveze izjavi žalbu. Objasniće se šta je žalba, kada i kako je moguće izjaviti žalbu, odnosno nadležnost prvostepenog i drugostepenog organa u postupku odlučivanja po žalbi.

Zakonom o opštem upravnom postupku u članu 13 stav 1 („Službeni glasnik RS“, br. 18/16 i 95/18 – nadalje: Zakon o upravnom postupku) uređeno je da „Protiv rešenja donesenog u prvom stepenu, odnosno, ako organ u upravnoj stvari nije odlučio u propisanom roku, stranka ima pravo na žalbu, ako zakonom nije drugačije regulisano.“ Članom 151 i članom 159 Zakona o upravnom postupku uređeno je pod kojim uslovima se može izjaviti žalba. Takođe je pravo na žalbu i uslove pod kojima je žalba dopuštena definisano i članom 24 stav 1 tačka 13 i članom 140 Zakona o poreskom postupku i poreskoj admi-

nistraciji („Službeni glasnik RS“, br. 80/02, 84/02, 23/03, 70/03, 55/04, 61/05, 85/05, 62/06, 62/06, 61/07, 20/09, 72/09, 53/10, 101/11, 2/12, 93/12, 47/13, 108/13, 68/14, 105/14, 91/15, 112/15, 15/16, 108/16, 30/18, 95/18, 86/19 i 144/20 – nadalje: ZPPPA). Žalba je dopuštena stranci u slučaju da rešenje nije izdato u zakonom određenom roku. Protiv konačnog poreskog upravnog akta – rešenja, može se pokrenuti upravni spor, ako zakonom nije drugačije propisano. Tužba u upravnom sporu može se podneti kao da je žalba odbijena onda kada podnosilac tužbe istakne da o njegovoj žalbi odluka nije doneta u zakonskom roku. Žalba na prvostepeno rešenje izjavljuje se mesno nadležnom odeljenju u kome se nezadovoljna stranka nalazi. Pripremljeno drugostepeno rešenje potpisuje pomoćnik ministra nadležan za poslove drugostepenog poreskog upravnog postupka**.**

Prvostepeni poreski organ može usvojiti žalbu ako oceni da je opravdana i da nije potrebno sprovoditi novo utvrđivanje činjenica, ako oceni da je sprovedeni postupak bio nepotpun, a to je moglo biti od uticaja na rešavanje, ako žalilac u žalbi iznosi nove činjenice i dokaze koji bi mogli biti od uticaja na drukčije rešavanje stvari, ako žaliocu nije bilo omogućeno, a moralo je biti, da učestvuje u postupku i ako je žalilac propustio da učestvuje u postupku, ali je u žalbi opravdao to propuštanje. Ako je žalba nedopuštena, neblagovremena ili izjavljena od neovlašćenog lica, a prvostepeni poreski organ je propustio da je zbog toga odbaci, odbaciće je drugostepeni organ u skladu sa ZPPPA. Ako žalbu ne odbaci, drugostepeni organ uzima predmet u rešavanje i isti može da:

1) odbije žalbu;

2) poništi poreski upravni akt u celosti ili delimično;

3) izmeni poreski upravni akt.

4. Rokovi rešavanja u postupcima po žalbi

Podaci izneseni u ovom delu baziraju se na rokovima kojih organ u poreskom upravnom postupku mora da se pridržava, rokovi su iskazani na osnovu ZPPPA, a tabelarno će biti prikazan i broj podnetih žalbi po rešenjima teritorijalnih organizacijskih jedinica Poreske uprave.

4.1. Rokovi propisani ZPPPA

Prema odredbama člana 147 stav 4 ZPPPA drugostepeni organ, tj. Sektor, u žalbenom postupku je u obavezi da donese odluku najkasnije 60 dana od dana kada je predata žalba. Prvostepeni poreski organ, u poreskom postupku po žalbi, može usvojiti žalbu i poreski upravni akt izmeniti i na taj način izbeći devolutivno svojstvo žalbe. Mora se napomenuti da se tada radi i dalje o menjanju prvostepenog poreskog upravnog akta, tj. da prvostepni organ žalbu može rešiti bez njenog dostavljanja nadležnom drugostepenom organu shodno članu 144 stav 2 ZPPPA. U takvim slučajevima, a u skladu sa odredbama člana 144 stav 7 ZPPPA, poreski organ je dužan da donese odluku najkasnije 30 dana od kada je žalba podneta.

4.2. Rokovi drugostepenog organa u postupcima po žalbi

U praksi, a suprotno ZPPPA, drugostepeni organ odluku po žalbi donosi van zakonom propisanih rokova. Rokovi u kojima drugostepeni organ donosi odluku višestruko su duži i kreću se oko jedne godine i šest meseci od dana predaje žalbe, posmatrajući period od 1. jula 2017. godine kada je formiran Sektor, kao organizacioni deo Ministarstva finansija. Ako se posmatra kraći vremenski period, može se zaključiti da su u godini osnivanja Sektora, tj. u periodu od 1. jula 2017. do 31. decembra 2017. godine, organi rešavali žalbe na rešenja u roku od jedne godine i 11 meseci. Ovako dug period donošenja odluke drugostepenog organa posledica je, svakako, i velikog broja preuzetih predmeta od do tada drugostepenog organa – Poreske uprave. Prelaskom nadležnosti za postupanje u drugostepenom poreskom postupku na Ministarstvo finansija, ono je preuzelo 10.374 predmeta od do tada nadležne Poreske uprave. U 2018. godini došlo je do skraćivanja roka donošenja odluke po žalbi na jednu godinu i pet meseci. Međutim, u 2019. godini ponovo dolazi do produženja roka i on iznosi jednu godinu i osam meseci. S obzirom na teritorijalnu organizovanost Sektora, u nastavku je data tabela s rokovima u postupanju po žalbi Sektora.

Tabela 1

Preuzete, primljene i rešene žalbe u periodu po godinama (2017, 2018. i 2019)

Odeljenje	1. jul – 31. decembar 2017. god.			1. januar – 31. decembar 2018. god.			1. januar – 31. decembar 2019. god.		
	Preuzeto	Primljeno	Rešeno	Preuzeto	Primljeno	Rešeno	Preuzeto	Primljeno	Rešeno
Beograd	2.360	1.939	1.132	3.167	4.559	6.424	1.302	3.578	4.331
Novi Sad	4.109	2.466	905	5.670	4.214	6.639	3.245	2.679	3.574
Kragujevac	1.751	1.378	682	2.447	2.263	2.794	1.916	1.589	1.633
Niš	1.774	1.022	515	2.281	2.127	2.757	1.651	1.691	2.261
Carina	380	1.858	1719	519	2.453	2.481	491	1.860	2.135
Σ poreska odeljenja	9.994	6.805	3.234	13.565	13.163	18.614	8.114	9.537	11.799
Σ carina + por.odelj.	10.374	8.663	4.953	14.084	15.616	21.095	8.605	11.397	13.934

Izvor: Informator o radu Ministarstva finansija, decembar 2020. godine

Tabela 1a

Preuzete, primljene i rešene žalbe u periodu od 01. 01. do 30. 06. 2020. godine

Odeljenje	1. januar 2020 – 30. jun 2020. godine
	Rešeno
Beograd	1.927
Novi Sad	2.147
Kragujevac	920
Niš	924
Carina	579
Σ poreska odeljenja	5.918

5. Posledice prekoračenja rokova u postupku po žalbi

Utvrđena poreska obaveza ožalbenim rešenjem ne može se naplatiti prinudnim putem kada drugostepeni organ u postupku po žalbi ne postupi u skladu sa odredbom člana 147 stav 4 ZPPPA, odnosno kada donose odluku, a proteklo je 60 dana od dana kada je žalba predata, shodno članu 79 stav 1 pod 4) ZPPPA i članu 147 stav 6 ZPPPA. Takođe, ako je postupak prinudne naplate započeo (Janjetović, 2015, str. 41), isti

mora biti prekinut dok se poreskom obvezniku – žaliocu, koji je uložio žalbu na rešenje, ne uruči rešenje po žalbi, tj. dok prvostepeni organ ne postupi po nalogu drugostepenog organa kojim je poništeno ožalbeno rešenje, o čemu poreski organ donosi zaključak o prekidu postupka prinudne naplate, shodno odredbi člana 147 stav 6 ZPPPA. Poreska uprava je dužna da prekine postupak prinudne naplate i u slučaju kada se žalbeni postupak nije završio u datim rokovima, prinudna naplata se obustavlja sve do trenutka do kada se licu koje je uložilo žalbu na doneto prvostepeno rešenje ne uruči doneto rešenje drugostepenog organa, tj. dok prvostepeni organ ne postupi po datom nalogu drugostepenog organa i donese novo rešenje u ponovnom postupku.

Postupak prinudne naplate poreza obustavlja se po službenoj dužnosti kada je poreska obaveza, koja je predmet prinudne naplate, poništena. Dugim rokovima odlučivanja po žalbi, posebno u slučajevima ponovnog, odnosno ponovnih postupaka, može da nastupi zastarelost utvrđivanja i naplate poreskih obaveza. Institut zastarelosti u poreskom postupku predstavlja protok vremena posle kojeg prestaju izvesna prava i ovlašćenja ili prestaju određeni odnosi. Subjekt prava ne može svoja prava i ovlašćenja da koristi beskonačno. Stoga, zakonodavac daje rok u kom se prava i ovlašćenja mogu koristiti. Ako subjekt prava ne koristi svoja prava u propisanom roku, njegova prava i ovlašćenja prestaju, jer se smatra da onaj ko svoja prava i ovlašćenja ne vrši (ne koristi) i nema interesa da to čini, odriče ih se. Zastarevanje utvrđivanja i naplate poreza (Gogić, 2020, str. 22), Poreska uprava ili lokalna poreska jedinica neće moći da utvrdi ni naplati, a isto nastupa u roku od pet godina od dana kada zastarelost počinje da teče, shodno članu 114 stav 1 ZPPPA.

6. Upravni spor kao oponent donesenom drugostepenom poreskom upravnom aktu

Odluka drugostepenog organa u poreskim upravnim predmetima konačna je, odnosno ne postoji redovan pravni lek u daljem postupku po upravnom predmetu o kome je odlučio drugostepeni organ. Međutim, poreski obveznik, nezadovoljan drugostepenim poreskim upravnim aktom (rešenjem), može da podnese tužbu Upravnom sudu. Upravni sud je poseban sud obrazovan Zakonom o uređenju sudova

(„Sl. glasnik RS“, br. 116/2008, 104/2009, 101/2010, 31/2011 – dr. zakon, 78/2011 – dr. zakon, 101/2011, 101/2013, 106/2015, 40/2015 – dr. zakon, 13/2016, 108/2016, 113/2017, 65/2018 – odluka US, 87/2018 i 88/2018 – odluka US) i sudi u upravnim sporovima. U upravnom sporu sud odlučuje i o zakonitosti konačnih pojedinačnih akata kojima se rešava o pravu, obavezi ili na zakonu zasnovanom interesu, u pogledu kojih u određenom slučaju zakonom nije predviđena drugačija sudska zaštita. Zaštita poreskog obveznika kao stranke u postupku (Vladisavljević & Pešić, 2018, str. 94), s obzirom na kvalitet donetih rešenja u poreskim upravnim postupcima, dodatno produžava postupak koji poreski organ vodi prema poreskim obveznicima, jer presuda doneta u korist tužioca u upravnom sporu poništava konačno rešenje. Kada je predmet vraćen na ponovni postupak i odlučivanje, drugostepeni organ je obavezan da donese odluku o svemu prema nalogu suda. U takvim slučajevima će drugostepeni organ poništiti prvostepeno rešenje i ceo predmet vratiti organu koji je rešenje doneo na ponovni postupak i odlučivanje, a budžet će ostati uskraćen za iznos utvrđenog poreza ili ako ne potpuno uskraćen, onda će bar pretrpeti odlaganje plaćanja poreskog prihoda, što nesumnjivo utiče na likvidnost budžeta. Sve to produžava rokove odlučivanja u smislu pravnosnažnosti rešenja i dovodi do uvećanih troškova, kako na strani budžeta, tako i na strani poreskih obveznika. Ilustracija rada drugostepenog organa data je u nastavku.

Tabela 2

Struktura odluka u drugostepenom poreskom upravnom postupku i pokrenuti upravni sporovi u 2019. godini

Odeljenje	Poništeno rešenja		Odbijeno rešenja		Ukupno rešenja		Utuženo rešenja	
	Broj	**%**	**Broj**	**%**	**Broj**	**%**	**Broj**	**%**
Beograd	1.406	41,59	1.975	58,41	3.381	100,00	547	27,70
Novi Sad	1.660	54,27	1.399	45,73	3.059	100,00	142	10,15
Kragujevac	482	31,00	1.073	69,00	1.555	100,00	205	19,11
Niš	830	43,48	1.079	56,52	1.722	100,00	508	47,08
Σ (Ukupno)	**4.378**	**44,20**	**5.526**	**55,80**	**9.904**	**100,00**	**1.402**	**25,37**

Izvor: Ministarstvo finansija

Na osnovu iskazanih podataka može se zaključiti da se u postupku po žalbi poništava veliki broj prvostepenih rešenja, čak 44,20%. U 55,80% slučajeva drugostepeni organ je potvrdio prvostepeno rešenje, tj. odbio žalbu kao neosnovanu.

Međutim, postupanje drugostepenog organa nije ujednačeno, tako da se uočava da na nivou proseka Sektora postupaju odeljenja Beograd i Niš, dok odeljenja Novi Sad i Kragujevac beleže značajna odstupanja od tog proseka. Posmatrajući rad i rezultate rada po odeljenjima za drugostepeni postupak, može se zaključiti da je najmanji broj poništenih rešenja donelo Odeljenje Kragujevac – 31%, dok je najveći broj poništenih rešenja po nacrtima rešenja donelo Odeljenje Novi Sad – čak 54,27%. U odnosu na pokrenute upravne sporove, najnepovoljnija situacija je u Odeljenju Niš, gde se čak u 47,08% slučajeva, u kojima je odbijena žalba izjavljena na prvostepeno rešenje kao neosnovana, podnosi tužba Upravnom sudu, dok je najmanji broj utuženih konačnih rešenja Odeljenja Novi Sad – samo 10,15%.

U većini slučajeva, razlog zbog kog su se podnosile žalbe na donesena poreska rešenja bio je nepoštovanje rokova datih članom 140 ZPPPA, dok je manji deo podnesen zbog toga što postupak nije sproveden na pravilan način, tj. bio je nepotpun, baš kao i iznošenja drugih bitnih činjenica koje su od uticaja na rešenje i visinu poreske obaveze. (https://www.mfin.gov.rs).

7. Troškovi stranke u procesu osporavanja poresko-upravnog akta

Odredbama člana 85 i 87 Zakona o upravnom postupku propisano je ko snosi troškove postupka. U članu 85 stav 1 Zakona o upravnom postupku propisano je da troškove postupka snosi organ koji vodi postupak, dok je u stavu 2 istog člana propisano da taj organ snosi i troškove postupka koji je pokrenut po službenoj dužnosti i povoljno okončan po stranku, ako zakonom nije drukčije predviđeno.

Kada se donese rešenje o upravnoj stvari, u njemu se definišu i troškovi postupka. U slučaju kada drugostepeni organ sam reši upravnu stvar, on odlučuje o troškovima prvostepenog i drugostepenog postupka. U upravnom sporu o troškovima postupka odlučuje sud. U

postupcima u kojima stranka angažuje advokata radi zaštite svojih prava i u kojima uspe u postupku po žalbi, odnosno po tužbi na konačno rešenje doneto u drugostepenom poreskom upravnom postupku, troškovi postupka padaju na teret organa koji je vodio postupak čije je rešenje poništeno, kako je i definisano članom 24 ZPPPA.

Lice koje podnosi žalbu na donesen poreski upravni akt dužno je da, u skladu sa Tarifnim brojem 6 ili 7 Zakona o republičkim administartivnim taksama („Sl. glasnik RS", br. 43/2003, 51/2003 – ispr., 61/2005, 101/2005 – dr. zakon, 5/2009, 54/2009, 50/2011, 70/2011 – usklađeni din. izn., 55/2012 – usklađeni din. izn., 93/2012, 47/2013 – usklađeni din. izn., 65/2013 – dr. zakon, 57/2014 – usklađeni din. izn., 45/2015 – usklađeni din. izn., 83/2015, 112/2015, 50/2016 – usklađeni din. izn., 61/2017 – usklađeni din. izn., 113/2017, 3/2018 – ispr., 50/2018 – usklađeni din. izn., 95/2018, 38/2019 – usklađeni din. izn., 86/2019, 90/2019 – ispr., 98/2020 – usklađeni din. izn. i 144/2020 – nadalje Zakon o republičkim administartivnim taksama), plati taksu kako bi postupak bio iniciran tj. pokrenut. Trenutna taksa za podnošenje žalbe na rešenje Poreske uprave doneto u upravnom postupku iznosi 1.970,00 dinara, a u skladu sa Tarifnim brojem 7 stav 5 Zakona o republičkim administrativnim taksama.

Ako se rešenjem suda utvrdi da su prava poreskog obveznika povređena, naknada pretrpljene štete i sudski troškovi padaju na teret budžeta Republike, odnosno na teret budžeta jedinica lokalne samouprave, a na osnovu člana 24 stav 3 ZPPPA.

U poreskom postupku Poreska uprava ne plaća takse, naknade, niti druge troškove za radnje i usluge koje joj, u tom postupku, pružaju državni organi, organi nadležni za vođenje registara, banke i drugi organi i organizacije shodno članu 166 ZPPPA.

U ovom delu se mogu spomenuti i troškovi utvrđeni advokatskom tarifom i predstavljaju nagradu advokata za njihov rad, tj. podnete podneske, žalbu, tužbu i učešća na ročištima u vezi sa konkretnim poreskim postupkom, odnosno upravnim sporom.

Tabela 3
Advokatska tarifa u poreskom upravnom postupku i upravnom sporu

Podnesak	Ročište	Žalba
30.000,00 dinara	31.500,00 dinara	60.000,00 dinara

8. Zaključak

Uspešnost rada Poreske uprave i uprave prihoda jedinica lokalne samouprave ceni se prema ostvarenoj naplati poreskih prihoda (Pantić, Jovanović, & Issa, 2019, str. 43), jer se samo njihovom kontinuiranom naplatom obezbeđuje nesmetano finansiranje funkcija iz nadležnosti države i lokalne samouprave (Đorđević & Krstić, 2020, str. 12). Prema tome, samo efikasna, kontinuirana i potpuna naplata poreza od svih poreskih obveznika predstavlja osnovni i najvažniji zadatak poreske administracije (Popović, 2014).

Imajući u vidu da su u 2019. godini bila utužena čak 1.402 konačna rešenja drugostepenog organa u poreskim upravnim predmetima, dobija se rezultat koji direktno uvećava rashode i izdatke budžeta. S obzirom da je u radu već navedeno da su razlozi zbog kojih su se osporavala kako prvostepana rešenja organa Poreske uprave, tako i drugostepana, bili nepoštovanje rokova datih ZPPPA, nesprovođenje postupka na pravilan način, kao i dolazak do drugih bitnih činjenica koje su od uticaja na rešenje, može se zaključiti da je potrebno:

- Povećati efikasnost organa za poreske upravne poslove, u smislu poštovanja rokova datih članom 140 ZPPPA, što se može postići novom reformom sistematizovanih radnih mesta u Poreskoj upravi i posledično povećanjem broja zaposlenih, ili izmenom ZPPPA u delu koji se odnosi na rokove i njihovim usklađivanjem sa realnim i mogućim,
- Identifikovati nepravilnosti u donesenim rešenima i ukazati na njih u cilju izbegavanja i ponavljanja grešaka i na kraju
- Donositi rešenja sa što više dokaza koji utiču na ishod rešenja i težiti ka njihovoj maksimalnoj iscrpljenosti.

Usvajanje nekog od navedenih predloga doprinelo bi u velikoj meri poboljšanju naplate poreza po osnovu donesenih rešenja, a svakako bi smanjilo upravne sporove i rasteretilo upravne sudove.

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INFLUENCE OF ADOPTED SECOND-INSTANCE TAX ADMINISTRATIVE ACTS ON THE BUDGET OF THE REPUBLIC OF SERBIA

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Summary: The Tax Administration, as one of the most important state parts that participates in the process of collecting public revenues, among other functions it performs, has the authority to adopt tax administrative acts which determine the amount of tax liability that taxpayers are obliged to pay. Taxpayers, on the other hand, are looking for a way to tax evasion of the determined tax or to seek a way to reduce the obligation as much as possible. In this process, the activities of both parties have an impact on the budget and the amount of tax collected. The paper presents the rights and obligations of the Tax Administration in the part related to the adoption of tax administrative acts, with an emphasis on the second instance tax administrative procedure because it directly affects the amount of collected revenues. Also, explanations are given regarding taxpayers in the process of enacting tax administrative acts, with a focus on the institute of appeal in that procedure. The available data on the basis of which individual conclusions were made are also presented.

Key words: tax procedure, budget, second instance body, local self-government, complaint

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THE IMPACT OF THE ADOPTED SECOND-INSTANCE TAX ADMINISTRATIIVE ACTS ON THE BUDGET OF THE REPUBLIC OF SERBIA

Abstract: The Tax Administration, as one of the most important state bodies that participates in the process of collecting public revenues, among other functions it performs, also has the authority to adopt tax administrative acts which determine the amount of tax liability that taxpayers are obliged to pay. Taxpayers, on the other hand, are constantly looking for a way to avoid paying the determined taxes or to reduce the tax liability as much as possible. In this process, the activities of both parties have an impact on the budget and the amount of tax revenue collected. The paper discusses the Tax Administration's rights and obligations, specifically those related to the adoption of tax administrative acts, with an emphasis on the second-instance tax procedure as it directly affects the amount of collected revenues. Furthermore, the paper describes the role of taxpayers in the process of adopting tax administrative acts, focusing primarily on the institute of appeal in this procedure. The available data are also presented supporting the conclusions of this article.

Key words: tax procedure, budget, second-instance body, local self-government, appeal

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1. Introduction

The topic of this paper is the analysis of the impact that administrative acts, passed by the Tax Administration, have on public revenues. The paper consists of six sections which define the core functions of the Tax Administration and the legal norms on which it is based. In addition to this, emphasis is placed on the institute of appeals, which may have a negative impact on the revenue budget. Following an overview of competencies of the Tax Administration bodies in the third section of the paper, the fourth section discusses the time limits for these bodies in the process of determining an appeal, followed by the fifth section of the paper which discusses the negative effects that may arise in case of exceeding these time limits. The sixth section deals with the mechanisms and legal remedies that a party may use if they are dissatisfied with the second-instance administrative decision.

In addition to the voluntary settlement of tax liabilities determined by the taxpayer through self-taxation (Radičić and Raičević, 2011), the tax administration makes decisions in the process of determining the tax liability, in the process of checking compliance with tax regulations and proper assessment of tax liabilities (Milojević, 2010) by the taxpayer (Dobos and Takács-György, 2020, p.78) and in the process of forced collection of assessed, but unsettled tax liabilities. The decision of the tax authority may be quashed on appeal in the second-instance procedure or by administrative proceedings. An appeal is a regular legal remedy by which a party can challenge the legality or regularity of a decision made in the first instance tax-administrative procedure which determines the party's rights and obligations. The party dissatisfied with the decision passed in the first-instance procedure initiates the second-instance procedure by filing an appeal. The right to appeal is permitted to both parties in the procedure - the Tax Administration and the taxpayer, or other tax debtors (Lazić, 2018, p. 11). When the rights or obligations are decided by an appellate decision, the person can file an appeal like any other person with an interest in the proceedings (such as a tax guarantor or persons responsible for due secondary tax liability of another taxpayer).

2. Jurisdiction of state bodies in the second-instance tax administrative procedure

In this part of the paper, we will discuss the legal norms that give the Tax Administration the right to decide on tax administrative acts, the timing of the granted right, and the organization of the Tax Administration.

The Constitution of the Republic of Serbia ("Official Gazette of RS", No. 98/2006 - hereinafter: the Constitution) guarantees two levels of administrative proceedings. The provision of Article 198, paragraph 1 of the Constitution prescribes that "Individual acts and actions of state bodies, organizations with delegated public powers, bodies of autonomous provinces and local self-government units must be based on the Law." The Constitution, Article 198, paragraph 2, stipulates "Legality of final individual acts deciding on a right, duty or legally grounded interest shall be subject to reassessing before the court in an administrative proceedings"

In accordance with the Law on Ministries, specifically Article 3 ("Official Gazette of RS", No. 128/20), the competent authority in appeals against first-instance tax decisions, made in the process of assessing, auditing and collecting tax by the Tax Administration and local tax administration, is the Ministry of Finance – Sector for Second-Instance Tax and Customs Procedure (hereinafter: the Sector).

Up until 30 June 2017, in accordance with the Law on Tax Procedure and Tax Administration ("Official Gazette of RS", No. 80/02, 84/02, 23/03, 70/03, 55 / 04, 61/05, 85/05, 62/06, 62/06, 61/07, 20/09, 72/09, 53/10, 101/11, 2/12, 93/12, 47/13, 108/13, 68/14, 105/14, 91/15, 112/15 and 15/16), the Tax Administration was designated as the second-instance authority in tax-administrative procedure. This means that the same authority was making both first-instance and second-instance decisions. The amending Article 25 [s11] of the Law on Tax Procedure and Tax Administration published in the Official Gazette of RS 108/2016 stipulates that as of 1 July 2017, the competent authority for dealing with appeals against decisions of the Tax Administration and local tax administration in the field of own-source revenues is to be the basic organizational unit within the Ministry of Finance, i.e. the Sector

for Second-Instance Tax and Customs Procedure. Such a solution was primarily aimed at preventing the same authority from making decisions in both the first-instance and the second-instance proceedings, (Nikodijević, 2019, p. 119), particularly considering the fact that the decisions in first-instance and second-instance proceedings were often made by the same persons who work in the Tax Administration offices.

The Sector's competencies include: "Deciding on and processing of appeals filed against first-instance decisions made by the Tax Administration units and local tax authorities. The departments within the Sector prepare decisions and file answers to judicial bodies when these decisions are to be prepared and drafted for the application of extraordinary legal remedies, they also respond to lawsuits filed with the relevant court against decisions made in tax and customs administrative proceedings. The Sector decides on legal remedies against customs administrative acts of customs offices adopted in the first-instance customs administrative procedure relating to the application of regulations in the field of the customs system. The Sector prepares decisions for the execution of judgments of the court competent for resolving administrative disputes, and provides an analysis of tax-administrative court practice relating to the application of regulations that fall within the scope of the Sector." (Information booklet on the work of the Ministry of Finance, December, 2020). The sector is headed by an Assistant Minister.

In terms of organization, the Sector is divided into four internal units that perform activities related to the second-instance tax administrative cases. Further organization implies the application of the territorial principle, i.e. four departments for second-instance tax procedure in:
- Belgrade,
- Novi Sad,
- Kragujevac and
- Nis

3. Institute of Appeals in Tax Procedure

This part of the paper discusses a party's right to appeal the procedure of tax assessment. We will explain what an appeal is, when and how it is possible to file an appeal, i.e., the competence of the first-instance and second-instance authority in the procedure of deciding on the appeal.

The Law on General Administrative Procedure in Article 13, paragraph 1 ("Official Gazette of the RS", No. 18/16 and 95/18 - hereinafter: the Law on Administrative Procedure) stipulates that "Against the decision rendered in the first instance, i.e., if the body in the administrative matter has not decided within the prescribed time limit, the party has the right to appeal, unless otherwise regulated by law, and if the body in the administrative matter has not made a decision within the prescribed time limit." Article 151 and Article 159 of the Law on Administrative Procedure stipulate the conditions under which an appeal may be filed. The same right to appeal and the conditions under which the appeal is allowed are defined in Article 24, paragraph 1, item 13 and Article 140 of the Law on Tax Procedure and Tax Administration ("Official Gazette of RS", No. 80/02, 84/02, 23/03, 70/03, 55/04, 61/05, 85/05, 62/06, 62/06, 61/07, 20/09, 72/09, 53/10, 101/11, 2 / 12, 93/12, 47/13, 108/13, 68/14, 105/14, 91/15, 112/15, 15/16, 108/16, 30/18, 95/18, 86/19 and 144/20 - hereinafter: LTPTA). The party is allowed the right to appeal in case the decision is not issued within the statutory time limit. Administrative proceedings may be instituted against the final tax administrative act unless otherwise provided by law. Administrative proceedings may be initiated, as if an appeal had been denied, also in cases when the person who initiates proceedings states that his appeal has not been decided within the statutory time limit. An appeal against the first-instance decision shall be filed with a locally competent authority. The prepared second-instance decision is signed by the assistant minister in charge of the second-instance tax administrative procedure.

The first-instance tax authority may accept an appeal, if it finds that the appeal is justified and that it is not necessary to investigate the facts anew, if it finds that the conducted proceedings were incomplete, and that this could have had a bearing on decision-making, if the appel-

lant presents new facts and evidence which could be of relevance for the matter to be decided otherwise, if the appellant was not, although it was obligatory, given the opportunity to take part in the proceedings and if the appellant failed to participate in the proceedings, but has justified such failure in the appeal. If an appeal is inadmissible, belated, or filed by an unauthorized person, and the first-instance tax authority failed to dismiss it on those grounds, the second-instance authority will dismiss it in accordance with the LTPTA.
If an appeal is not dismissed, the second-instance authority takes the case into consideration, and it can:

1) deny an appeal;

2) annul the tax administrative act in whole or in part;

3) amend the tax administrative act.

4. Time limits for resolving appeals proceedings

The data presented in this part of the paper are based on the time limits that the authority in the tax-administrative procedure must adhere to, the time limits stated are in accordance with LTPTA, and the data table shows the number of filed complaints according to the decisions of territorial organizational units of the Tax Administration.

4.1. Time limits prescribed by LTPTA

According to the provisions of Article 147, paragraph 4 of the LTPTA, the second-instance authority, i.e., the Sector, in the appellate procedure is obliged to make a decision no later than 60 days from the day when the appeal was submitted. The first-instance tax authority, in the tax procedure upon appeal, may adopt the appeal and amend the tax administrative act and thus avoid the devolutive effect of an appeal. It must be noted that in this case it is still a matter of amending the first-instance tax administrative act, i.e., that the first-instance authority can resolve the appeal without having to forward it to the competent second-instance authority pursuant to Article 144, paragraph 2 of the LTPTA. In such cases, and in accordance with the provisions of Article

144, paragraph 7 of the LTPTA, the tax authority is obliged to make a decision no later than 30 days from the receipt date of the appeal.

4.2. Time limits for the second-instance appeal procedures

In practice, and contrary to the LTPTA, the second-instance authority decides the appeal outside the prescribed time limits. The time limits by which the second-instance authority decides the appeal are several times longer and it usually takes around one year and six months from the receipt date of the appeal for the decision to be made, considering the period from 1 July 2017, when the Sector was formed, as an organizational unit of the Ministry of Finance. If a shorter period of time is observed, it can be concluded that in the year the Sector was formed, i.e., in the period from 1 July 2017 to 31 December 2017, the authorities resolved appeals within one year and 11 months. Such a long period of decision-making by the second-instance authority is, of course, due to the large number of cases taken over from the second-instance authority within the Tax Administration at the time. With the transfer of the competence to act in the second-instance tax procedure, the Ministry of Finance took over 10,374 cases from the Tax Administration. In 2018, the time limit for determining the appeal was shortened to one year and five months. However, in 2019 the time limit was extended again, and now it amounts to one year and eight months. Considering the territorial organization of the Sector, below is a table with time limits in dealing with the appeals.

Table 1

Appeals taken over, received and resolved in the period by years (2017, 2018 and 2019)

Department	1 July - 31 December 2017			1 January – 31 December 2018			1 January – 31 December 2019		
	Taken over	Received	Resolved	Taken over	Received	Resolved	Taken over	Received	Resolved
Belgrade	2.360	1.939	1.132	3.167	4.559	6.424	1.302	3.578	4.331
Novi Sad	4.109	2.466	905	5.670	4.214	6.639	3.245	2.679	3.574
Kragujevac	1.751	1.378	682	2.447	2.263	2.794	1.916	1.589	1.633
Nis	1.774	1.022	515	2.281	2.127	2.757	1.651	1.691	2.261
Customs	380	1.858	1719	519	2.453	2.481	491	1.860	2.135
Σ tax departments	9.994	6.805	3.234	13.565	13.163	18.614	8.114	9.537	11.799
Σ customs + tax departments	10.374	8.663	4.953	14.084	15.616	21.095	8.605	11.397	13.934

Source: Information booklet on the work of the Ministry of Finance, December 2020

Table 1a

Appeals taken over, received and resolved in the period from 1 January – 30 June 2020

Department	***January 1 – June 30 2020***
	Resolved
Belgrade	1.927
Novi Sad	2.147
Kragujevac	920
Nis	924
Customs	579
Σ tax departments	5.918

5. Consequences of exceeding time limits in the appeal procedure

The tax liability determined by the appealed decision cannot be forcibly collected when the second-instance authority in the appeal procedure does not act in accordance with the provision of Article 147, paragraph 4 of the LTPTA, that is, if the decision is made 60 days from the delivery date of the appeal, according to Article 79, paragraph 1, point 4) of the LTPTA and Article 147, paragraph 6 of the LTPTA. Also, if the procedure of forced collection (Janjetović, 2015, p. 41) has started, it must be terminated until the taxpayer, i.e. appellant, who filed an appeal against the decision, is served with the reviewed decision, i.e., until the first-instance authority acts upon the order of the second-instance authority by which the decision was annulled on appeal. The tax authority then issues a decision to terminate the forced collection procedure, according to the provisions of Article 147, paragraph 6 of the LTPTA. The Tax Administration is obliged to terminate the forced collection procedure and, in case the appeal procedure is not completed within the prescribed time limits, the forced collection is suspended until the person who filed an appeal against the first-instance decision is served with the second-instance decision, i.e., until the first-instance authority acts as ordered by the second-instance authority and makes a new decision in a repeated procedure.

The procedure of forced collection of taxes is suspended ex officio when the tax liability that is the subject of the forced collection is annulled. Lengthy time limits for deciding cases on appeal, especially in repeated procedures, can lead to the expiry of the limitation period for tax assessment and collection. The Limitation Period within the tax procedure refers to the passage of time after which certain rights and powers or certain relations cease to exist. The subject of law cannot exercise his rights and powers indefinitely. Therefore, the legislator defines a deadline within which the rights and powers can be exercised. If the subject of law does not exercise his rights within the prescribed period, his rights and powers cease to exist as it is considered that if one does not exercise (does not use) his rights and powers and has no interest in doing so, he renounces them. Following the limitation period for tax assessment and collection (Gogić, 2020, p. 22), The Tax Administration

and the local tax authority will not be able to assess or collect taxes and secondary tax liabilities if the limitation period expires, which occurs five years from the date the limitation period starts to run, according to Article 114, paragraph 1 of the LTPTA.

6. Administrative dispute vs. the adopted second-instance tax administrative act

The decision of the second-instance authority in tax administrative cases is final, i.e., there is no regular legal remedy in the form of further proceedings concerning the administrative case that was decided on by the second-instance authority. However, a taxpayer dissatisfied with the second-instance tax administrative act (decision) may consider bringing a case to the Administrative Court. The Administrative Court is a special court established by the Law on Organisation of Courts ("Official Gazette of the RS", No. 116/2008, 104/2009, 101/2010, 31/2011 - other law, 78/2011 - other law, 101 / 2011, 101/2013, 106/2015, 40/2015 - other law, 13/2016, 108/2016, 113/2017, 65/2018 - AC decision, 87/2018 and 88/2018 - AC decision) that adjudicates in administrative disputes. In an administrative dispute, the court also decides on the legality of final individual acts, which determine a party's right, obligation or legal interest, in respect of which the law at times does not provide effective judicial protection. Considering the quality of the decisions made in tax administrative proceedings, the protection of the taxpayer as a party in the proceedings (Vladisavljević & Pešić, 2018, p. 94) further prolongs the proceedings conducted by the tax authority against taxpayers since the judgment in favor of the claimant in the administrative dispute annuls the final decision. When the case is returned for a new procedure, the second-instance authority is obliged to act as ordered by the court. In such cases, the second-instance authority will annul the first-instance decision and return the case to the authority that ordered a retrial, and the budget will be deprived of the amount of determined tax or, if not completely deprived, then at least negatively affected by the tax deferral. All this prolongs the decision-making deadlines in terms of the enforceability of the decision and leads to increased costs, concerning both the

budget and the taxpayers. Here is an illustration of the work of the second-instance authority.

Table 2

The structure of decisions in the second-instance tax administrative procedure and initiated administrative disputes in 2019

Department	**Annulled decisions**		**Rejected decisions**		**Total no. of decision**		**Sued decision**	
	Number	**%**	**Number**	**%**	**Number**	**%**	**Number**	**%**
Belgrade	1.406	41,59	1.975	58,41	3.381	100,00	547	27,70
Novi Sad	1.660	54,27	1.399	45,73	3.059	100,00	142	10,15
Kragujevac	482	31,00	1.073	69,00	1.555	100,00	205	19,11
Nis	830	43,48	1.079	56,52	1.722	100,00	508	47,08
Σ (Total)	**4.378**	**44,20**	**5.526**	**55,80**	**9.904**	**100,00**	**1.402**	**25,37**

Source: Ministry of Finance

Based on the stated data, it can be concluded that in the appeal procedure, many first-instance decisions are annulled, as a matter of fact, as much as 44.20% of first-instance decisions are annulled. In 55.80% of cases in which an appeal was filed, the second-instance authority confirmed the first-instance decision by rejecting the appeal as unfounded.

However, the actions of the second-instance authority are not uniform, so it can be noted that the departments in Belgrade and Nis act on the average level of the Sector, while the departments in Novi Sad and Kragujevac record significant deviations from the average. Ob-

serving the results of second-instance procedures by departments, it can be concluded that the fewest annulled decisions were made by the Department in Kragujevac - 31%, while the largest number of annulled decisions, according to draft decisions, was made by the Department in Novi Sad - as much as 54.27%. Regarding the number of initiated administrative disputes, the Department in Nis displays the least favorable situation, where in as many as 47.08% of cases in which an appeal against the first-instance decision was rejected for being unfounded, a claim is started before the Administrative Court, while the smallest percentage of appealed final decisions is in Novi Sad - only 10,15%. In most cases, the main reason for appealing these tax decisions is non-compliance with the time limits prescribed by Article 140 of the LTPTA, while a smaller number of appeals were filed because the procedure was not conducted properly, that is, it was incomplete, and also for providing other important facts which can affect the tax decision and the amount of tax debt. (https://www.mfin.gov.rs).

7. The costs of contesting the tax-administrative act

The provisions of Articles 85 and 87 of the Law on Administrative Procedure prescribe who bears the costs of the procedure. Article 85, paragraph 1 of the Law on Administrative Procedure stipulates that the costs of the procedure shall be borne by the authority conducting the procedure, while paragraph 2 of the same Article stipulates that this authority shall also bear the expenses of the procedure initiated ex officio and resolved in favor of the party unless otherwise provided by law.

When a decision on an administrative matter is made, it also states the costs of the procedure. When the second-instance authority decides the administrative matter itself, it specifies the costs of both the first and the second instance procedure. In an administrative dispute, the Administrative Court decides on the costs of the procedure. In proceedings in which a party hires a lawyer to protect his rights and the appeal procedure is subsequently successful, i.e., the lawsuit against the final decision made in the second-instance tax administrative procedure ends in favour of the party, the costs of the procedure shall be borne by

the authority whose decision was annulled as defined by Article 24 of LTPTA.

The party who submits an appeal against the passed tax administrative act is obliged to, by Tariff No. 6 or 7 of the Law on Republic Administrative Fees ("Official Gazette of RS", No. 43/2003, 51/2003 - amended 61/2005, 101/2005 - other law, 5/2009, 54/2009, 50/2011, 70/2011 - adjusted amount, 55/2012 - adjusted amount, 93/2012, 47 / 2013 - adjusted amount, 65/2013 - other law, 57/2014 - adjusted amount, 45/2015 - adjusted amount, 83/2015, 112/2015, 50/2016 - adjusted amount, 61/2017 - adjusted amount, 113/2017, 3/2018 - amended, 50/2018 - adjusted amount, 95/2018, 38/2019 - adjusted amount, 86 / 2019, 90/2019 - amended, 98/2020 - adjusted amount and 144/2020 - hereinafter the Law on Republic Administrative Fees), pay the fee in order for the procedure to be initiated. The current fee for filing an appeal against the decision of the Tax Administration made in the administrative procedure is 1,970.00 RSD, in accordance with Tariff No. 7, paragraph 5 of the Law on Republic Administrative Fees.

If the court decides that the taxpayer's rights have been violated, compensation for damages and court costs shall be borne by the budget of the Republic, or the local self-government units, as prescribed in Article 24, paragraph 3 of the LTPTA.

During tax proceedings, the Tax Administration does not pay any taxes, fees or other expenses for actions and services provided to it by state bodies, governmental bodies responsible for record keeping, banks and other bodies and organizations, as stated in Article 166 of the LTPTA.

Here, we should also mention the fees and expenses determined by the lawyer's tariff system which represent lawyers' compensation for their legal services, i.e., submitting motions, filing appeals, initiating lawsuits and participating in hearings related to a specific tax procedure or administrative procedure.

Table 3
Lawyer's fees in tax administrative proceedings and administrative disputes

Submission	Hearing	**Appeal**
30,000.00 RSD	31,500.00 RSD	60,000.00 RSD

8. **Conclusion**

The success of the Tax Administration and the Revenue Administration of local self-government units is measured by the amount of tax revenue collected (Pantić, Jovanović and Issa, 2019, p. 43) since it is only the continuous collection of tax revenue that ensures unhindered financing of public services and projects provided by state and local governments (Đorđević and Krstić, 2020, p.12). Therefore, it is the efficient, continuous, and effective collection of taxes from all taxpayers that is the most important task of the tax administration (Popović, 2014).

Considering the fact that in 2019, as many as 1,402 second-instance decisions in tax-administrative cases were appealed, it was not surprising to see a direct increase in state budget expenditures. Given that the paper has already stated that the main reasons for disputing both the first and the second instance decisions of the Tax Administration bodies were non-compliance with the time limits prescribed by the LTPTA, failure to conduct the procedure properly, as well as providing other important facts that may affect the decision, we can conclude that it is necessary to:

- Increase the efficiency of tax administration bodies, especially in terms of respecting time limits prescribed by Article 140 of the LTPTA, which can be achieved either by increasing the number of employees in the Tax Administration by means of employment reform programme or by amending the provisions of the LTPTA which deal with time limits and modifying these limitations to meet the conditions,

- Identify irregularities in decisions made and point them out in order to avoid repeating the same mistakes,
- Make decisions with as much evidence as possible that support the decision made.

Adoption of some of the above proposals would greatly contribute to the improvement of tax collection, and would certainly reduce the number of administrative disputes and relieve Administrative Courts.

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NAČELO NE BIS IN IDEM U KONTEKSTU EVROPSKOG NALOGA ZA HAPŠENJE: POGLED KROZ JURISPRUDENCIJU SUDA PRAVDE EU

Rezime: U radu se analiziraju najznačajniji stavovi Suda pravde Evropske unije po pitanju interpretacije odredbi Okvirne odluke o Evropskom nalogu za hapšenje kojima je načelo ne bis in idem utvrđeno kao osnova obavezujućeg, ali i fakultativnog izuzetka od postupanja države izvršenja po zaprimljenom ekstradicionom zahtevu. Iako Evropski nalog za hapšenje predstavlja jedan od najznačajnijih instituta krivičnopravne saradnje država članica, odredbe Okvirne odluke kojom je on etabliran u pravu Unije nedovoljno precizno definišu neke od ključnih aspekata njegove primene, što ostavlja dovoljno prostora za različita tumačenja i postupanja nacionalnih organa, čime se doprinosi pravnoj nesigurnosti i nejednakoj primeni prava evropske organizacije u njenim članicama. Sud pravde je neke od ključnih stavova u ovom kontekstu izneo u slučajevima Mantello iz 2010, odnosno AY iz 2018. godine, a u fokusu su primarno bila pitanja vezana za kategoriju "istog dela", kao jednog od ključnih kriterija za primenu ne bis in idem u transnacionalnom kontekstu. Pri razmatranju navedenih slučajeva, korištene su induktivno-deduktivna i metoda analize sadržaja.

Ključne reči: krivičnopravna saradnja, Evropski nalog za hapšenje, ne bis in idem, Sud pravde Evropske unije, Mantello, AY

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1. Uvod

Evropski nalog za hapšenje (*European Arrest Warant*, EAW) predstavlja jedan od najznačajnijih, ali i najosetljivijih instituta krivičnopravne saradnje članica Evropske unije. Okvirna odluka 2002/584/JHA[2], kojom je ovaj institut etabliran u pravnom sistemu organizacije, od njenog donošenja, a posebno nakon izmena i dopuna 2009. godine[3], omogućila je procesno rasterećenje ekstradicije vlastitih državljana koji se dovode u vezu sa krivičnim postupkom u drugoj članici, primarno zahvaljujući značajnoj redukciji principa dvostruke kriminalizacije[4] koji je u ranijim aktima bio veoma zastupljen. Sud države izvršenja nadležan je da utvrdi da li su svi procesni kriteriji za postupanje ispunjeni, ne ulazeći u meritum slučaja koji se vodi ili je okončan pred sudom druge članice, čime je pravosudna saradnja na osnovu Evropskog naloga za hapšenje učinjena fleksibilnijom i automatizovanijom. Međutim, to ne znači da primena Okvirne odluke u državama članicama nije nailazila na ustavnopravne, ali i političke prepreke, posebno kada je reč o ekstradiciji vlastitih državljana. Ustavni sudovi SR Nemačke, Poljske, Kipra i Češke, na primer, uslovljavali su ostvarivanje saradnje po ovom osnovu obezbeđenjem zaštite ljudskih prava lica koja su predmet naloga minimalno na način kako to predviđa njihov vlastiti ustavni akt, dok su se neke druge države, poput Velike Britanije, Malte, Portugala ili Danske, više oslanjale na političke razloge pri osporavanju zahteva za ekstradicijom vlastitih državljana (Tučić, 2020, str. 219). Ovi, ali i drugi problemi zahtevali su snažnije uključivanje Suda pravde Evropske unije u interpretativno otklanjanje nedoumica u primeni Okvirne odluke, čime bi se ne samo doprinelo višem stepenu usklađenosti nacionalnih

[2] Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between member states, OJ192, 18. 7. 2002, p. 1– 20.

[3] Council Framework Decion 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between member states, Consolidated version of 28 March 2009: 2002F0584-EN-28.03.2009-001.001.

[4] Princip dvostruke kriminalizacije podrazumeva da je delo koje se određenom licu stavlja na teret kao takvo definisano i odredbama nacionalnog prava države državljanstva i odredbama države koja zahteva ekstradiciju.

provedbenih propisa već i jačanju principa pravne sigurnosti na prostoru Unije. Uzimajući u obzir da je u osnovi Evropskog naloga za hapšenje institut međunarodne pravosudne saradnje, oličen u priznanju i izvršenju stranih sudskih odluka, posebno interesantno pitanje odnosilo se na primenu načela *ne bis in idem* kao razloga za nepostupanje nacionalnog suda po ekstradicionom zahtevu druge članice, o čemu je Sud pravde relevantna zapažanja izneo u dva navrata, prvo u slučaju *Mantello* (C – 261/09) iz 2010, a potom i slučaju *AY* (C – 268/17) iz 2018. godine.

2. Načelo *ne bis in idem* u Okvirnoj odluci o Evropskom nalogu za hapšenje

Sa korenima u rimskom civilnom pravu, načelo *ne bis in idem* manifestuje se kao jedan od postulata pravne sigurnosti i pravičnosti u krivičnopravnoj materiji, te podrazumeva da određeno lice ne može biti dva puta procesuirano, odnosno presuđeno za isto krivično delo. Ono je članom 3. Okvirne odluke o EAW predviđeno kao jedna od mandatornih osnova za nepostupanje suda po ekstradicionom zahtevu druge članice. Ili, kako kaže član 3.2 Okvirne odluke, nacionalni sud će odbiti ekstradicioni zahtev ukoliko raspolaže saznanjima da je „lice u pitanju konačno presuđeno u nekoj državi članici za isto krivično delo, pod uslovom da je, u slučaju izricanja presude, kazna izdržana ili se trenutno izdržava ili se više ne može izvršiti prema pravu države čiji je sud krivičnu sankciju izrekao“[5]. Pored rešenja iz navedenog člana, *ne bis in idem*, kao osnova za odbijanje ekstradicionog zahteva, može se identifikovati i u članu 4.2 i 4.3 Okvirne odluke, ovaj put kao neobavezujuća, diskreciona osnova postupajućeg nacionalnog suda. Članom 4.2 Okvirne odluke ostavljena je mogućnost sudu da ne postupi po ekstradicionom zahtevu ukoliko se predmetno lice već nalazi u krivičnom postupku za isto delo

[5] Iako se upotrebljava različita terminologija, u suštini identično određenje sadržavao je i član 54 Konvencije o primeni Sporazuma iz Šengena. Pogledati: Convention on Implementing the Schengen Agreement of 14 June 1956 Between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of the checks on their common borders. OJ L 239, 22. 9. 2000, p. 16–62.

pred sudom države izvršenja, odnosno, prema članu 4.3, ukoliko sud države izvršenja odluči da ne procesuira, odnosno da okonča tekući krivični postupak protiv predmetnog lica za delo na koje se nalog odnosi ili ukoliko je takva odluka suda doneta na zahtev samog lica u postupku, sprečavajući dalje krivične postupke za isto delo (Materljan, I. & Materljan, G., 2019, str. 64). Nedovoljno precizno formulisane, navedene odredbe ostavljale su dosta prostora za različita tumačenja i, posledično, različita postupanja nacionalnih sudova, čime se direktno ugrožavaju principi pravne sigurnosti i pravičnosti na nivou Evropske unije. Samim tim, bilo je samo pitanje vremena kada će se njihovo tumačenje zatražiti od Suda pravde u okviru postupka o prethodnom pitanju.

3. Slučaj *Mantello*

Italijanski sud u Kataniji uputio je Višem pokrajinskom sudu u Štutgartu Evropski nalog za hapšenje na ime gospodina Mantele koji se odnosio na dva krivična dela: dvogodišnje sudelovanje u nelegalnoj trgovini narkoticima u okviru organizovane kriminalne organizacije, te nezakonito nabavljanje, posedovanje, transport, prodaju ili stavljanje narkotika na raspolaganje trećim licima, u isto vreme i na istim mestima na kojima je počinjeno i prvo krivično delo. Nemački sud se u okviru postupka o prethodnom pitanju obratio Sudu pravde Evropske unije sa dva pitanja. Prvo se odnosilo na formulaciju „isto delo" (eng. *same act*) iz člana 3.2 Okvirne odluke, odnosno da li se pojam „istog dela" utvrđuje na osnovu nacionalnog prava države koja je ekstradicioni zahtev izdala, prava postupajuće države ili pak na osnovu autonomno protumačenog prava Evropske unije. Očekivano, polazeći od teleološkog principa obezbeđenja jedinstvene primene prava Unije u svim članicama, Sud pravde je oduzeo pravo nacionalnim sudovima da u svetlu domaćeg prava vrše tumačenje pojma „isto delo" u transnacionalnom ili prekograničnom kontekstu, istakavši da, kako je reč o autonomnoj kategoriji prava Evropske unije, samo je on ovlašten da vrši njegovo tumačenje. Takođe, kako član 54 Konvencije o primeni Sporazuma iz Shengena i član 3.2 Okvirne odluke imaju identičan cilj, Sud je istakao

da se njegova ranija tumačenja i stavovi u vezi sa članom 54 Konvencije[6] odnose i na član 3.2 Okvirne odluke. Drugo pitanje je podrazumevalo da li se radnje nelegalnog uvoza narkotika mogu tretirati kao „ista dela" iz člana 3.2 Okvirne odluke kao i članstvo u organizovanoj kriminalnoj grupi čija je osnovna delatnost upravo nelegalna trgovina narkoticima, posebno ukoliko su, kako se ispostavilo, italijanski istražni organi, u momentu donošenja presude za nezakonit uvoz narkotika, raspolagali dokazima da je gospodin Mantela pripadao organizovanoj kriminalnoj organizaciji, ali su ih, iz istražnih i operativno-taktičkih razloga, odlučili ne izneti pred sud i ne pokrenuti postupak i po tom osnovu. Ovo pitanje je Sud pravde shvatio kao pitanje postojanja pravosnažno presuđene stvari kao bitnog kriterija za primenu *ne bis in idem*, s obzirom da su italijanski istražni organi u konkretnom slučaju raspolagali dokaznim materijalom za dela obuhvaćena Evropskim nalogom za hapšenje (*para*. 43–44). Sud pravde je istakao da se pitanje postojanja pravosnažno presuđene stvari za potrebe člana 3.2 Okvirne odluke utvrđuje na osnovu nacionalnih propisa države čiji je sud presudu doneo, te da sudska odluka koja ne sprečava dalji krivični progon u nacionalnom pravnom kontekstu ne bi trebalo da predstavlja prepreku ni za otpočinjanje niti za nastavak postupka za iste krivične radnje u drugoj članici (*para*. 46–47). Posebno što se, u konkretnom slučaju, italijanski sud, na traženje nemačkog suda u skladu sa članom 15.4 Okvirne odluke, već izjasnio da njegove prethodne odluke ne obuhvataju sve krivične radnje iz Evropskog naloga za hapšenje te, samim tim, nemački sud nema osnovu za primenu načela *ne bis in idem* i odbijanje ekstradicionog zahteva (*para*. 50–51). Šta navedeni stavovi Suda pravde zapravo znače? Kada je o prvom segmentu reč, uzimajući u obzir i dalje izražene razlike u krivičnom pravu država članica, uključujući i definicije bića krivičnog dela, Sud pravde je, oduzimajući pravo nacionalnim sudovima da samostalno interpretiraju pojam „istog dela", omogućio transnacionalnu primenu načela *ne bis in idem*. U kontekstu drugog pitanja, Sud pravde je prepoznao značaj nacionalnih propisa i odluka nacionalnih sudskih organa pri utvrđivanju postojanja pravosnažne presuđene stvari, te uslove za primenu *ne bis in idem* sa nacionalne ravni transferisao na evropsku. Ili, kako kaže Sud, prvo moraju biti ispunjeni uslovi za primenu nacio-

[6] Pogledati, na primer: ECJ, *Zoran Spasic*, 27. 05. 2014, C – 29/14, PPU.

nalnog *ne bis in idem*, pa tek onda ovo načelo može biti upotrebljeno i u transnacionalnom, evropskom kontekstu (Ivičević-Karas, 2014, str. 291).

4. Slučaj *AY*

Pored toga što su u njegovom fokusu fakultativni razlozi primene *ne bis in idem* iz člana 4. Okvirne odluke, slučaj *AY* interesantan je i zbog toga što se Sudu pravde obratio Županijski sud u Zagrebu, pred kojim je vođen postupak protiv dva lica za davanje i primanje mita, jednog ranije visoko rangiranog službenika iz Hrvatske, te predsednika upravnog odbora jednog mađarskog trgovačkog društva. Županijski sud, posredstvom USKOK-a[7], uputio je Evropski nalog za hapšenje mađarskoj strani sa zahtevom za ekstradicijom mađarskog državljanina, međutim, mađarski sud je to odbio, ističući kako je po istom krivičnom delu u Mađarskoj već vođena istraga koja je obustavljena, mada je predmetno lice u ovom postupku imalo status svedoka, a ne osumnjičenog (Materljan, 2019, str. 232). Nakon što je mađarska strana odbila da se izjasni po ponovljenom zahtevu, Županijski sud se maja 2017. godine obratio Sudu pravde Evropske unije, tražeći odgovor na ukupno pet pitanja, od kojih su se četiri odnosila na delovanje organa Mađarske kao zemlje izvršenja naloga, a poslednje na postupanje Županijskog suda. Pitanje koje je u našem fokusu odnosilo se na to da li odredbe člana 4.3 Okvirne odluke, kojima se predviđa fakultativna mogućnost odbijanja izručenja iz razloga prethodnog odustajanja ili obustave krivičnog postupka po istom krivičnom delu u zemlji izvršenja, treba tumačiti tako da se one odnose samo na konkretno krivično delo ili obuhvataju i lice na koje se nalog odnosi, posebno uzimajući u obzir da se konkretno lice u istražnom postupku u Mađarskoj pojavilo u svojstvu svedoka, dok se u postupku pred Županijskim sudom ono pojavljuje kao osumnjičeni, odnosno optuženi. Sud pravde je istakao da prethodno odustajanje ili obustava postupka po istom krivičnom delu u kojem se lice iz Evropskog naloga za hapšenje pojavljuje kao svedok ne može predstavljati osnovu iz člana 4.3 Okvirne odluke za nepostupanje po nalogu, ukoliko se

[7] Ured za suzbijanje korupcije i organizovanog kriminaliteta Republike Hrvatske.

ono u nalogu pojavljuje kao osumnjičeni. Po mišljenju Suda, ukoliko bi se odredbe člana 4.3 Okvirne odluke tumačile samo u kontekstu krivičnog dela, a ne i u kontekstu identiteta i svojstva lica na koje se nalog odnosi, stvorio bi se prostor za izbegavanje postupanja po ovom važnom krivičnopravnom institutu Evropske unije. Takođe, kako su mogućnosti nepostupanja iz člana 4.3 Okvirne odluke fakultativnog karaktera, one predstavljaju izuzetak i moraju se tumačiti restriktivno (*para.* 52–57). Istražni postupak koji je obustavljen pred mađarskim organima, vođen je protiv n.n. lica, a ne protiv konkretnog mađarskog državljanina, te se ovakav *in rem* postupak ne može koristiti kao osnova za nepostupanje po ekstradicionom zahtevu koji je uputila hrvatska strana. Sud se osvrnuo i na činjenicu da su se mađarski organi „oglušili" o ponovljeni Evropski nalog za hapšenje, istakavši da je nadležno telo dužno doneti odluku o svakom Evropskom nalogu za hapšenje koji mu je upućen, čak i ukoliko je u toj državi prethodno već odlučivano o ranijim nalozima za hapšenje koji su se odnosili na isto lice i isto krivično delo, a drugi je Evropski nalog za hapšenje izdat iz razloga što je u državi izdavanja podignuta optužnica protiv lica na koje se nalog odnosi (*para.* 32–36). Dakle, bez obzira što su se mađarski organi već jednom negativno izjasnili o ekstradicionom zahtevu Hrvatske, oni su bili dužni da se izjasne i po novom nalogu, iz prostog razloga što je došlo do promene procesnog statusa lica A.Y., te je od osumnjičenog, nakon podizanja optužnice, postalo lice optuženo za izvršenje krivičnog dela davanja mita.

5. Zaključak

Evropski nalog za hapšenje predstavlja jedan od ključnih instituta krivičnopravne saradnje članica Evropske unije. I pored napretka koji je ostvaren u nepune dve decenije, primena ovog instituta i dalje nailazi na različite prepreke, koje posebno dolaze do izražaja po pitanju ekstradicije vlastitih državljana u vezi sa izvršenjem krivičnog dela u drugoj članici. Države članice neretko pribegavaju različitim mehanizmima kako bi postupak ekstradicije izbegle, uključujući i mogućnosti predviđene članovima 3 i 4 Okvirne odluke, a među kojima posebno do izražaja dolazi načelo *ne bis in idem* u transnacionalnom kontekstu.

U okolnostima nedovoljne preciznosti odredbi kojima je regulisana primena ovog načela kao svojevrsne zaštite prava lica koje se dovodi u vezu sa prekograničnim krivičnim delom, pojavila se potreba njihovog interpretativnog „preciziranja" od strane Suda pravde Evropske unije. Za sada, Sud pravde se kroz dva slučaja bavio pitanjem uslova prekogranične primene načela *ne bis in idem* u skladu sa referentnim odredbama Okvirne odluke, u slučaju Mantello iz 2010, te u slučaju AY iz 2018. godine.

Značaj slučaja *Mantello* je u tome što je Sud pravde samo značenje jednog od ključnih uslova prekogranične primene načela *ne bis in idem*, a to je postojanje „istog dela" ili „istih radnji" iz člana 3.2 Okvirne odluke, izuzeo iz nadležnosti nacionalnog prava te, kako je reč o autonomnoj kategoriji prava Evropske unije, sebe verifikovao kao isključiv interpretativn autoritet u tom kontekstu. Na ovaj način Sud je, uvažavajući razlike u krivičnopravnoj materiji u državama članicama, uključujući i definicije pojedinih elemenata bića krivičnih dela, omogućio primenu načela *ne bis in idem* na evropskoj ravni, jer bi, u suprotnom, njegova primena bila veoma upitna. Ujedno, Sud je u slučaju *Mantello* jasno ukazao da nacionalni sudovi ne smeju praviti procesne diferencijacije u primeni *ne bis in idem* u domaćem i prekograničnom kontekstu te, ukoliko su ispunjeni uslovi za njegovu primenu u domaćem smislu, ispunjeni su uslovi za primenu i u evropskom smislu. I ne samo to, ispunjenost uslova za primenu *ne bis in idem* na nacionalnoj ravni, po Sudu pravde, manifestuje se kao svojevrstan „filter" za njegovu primenu na transnacionalnoj ravni.

Slučaj *AY* značajan je jer je Sud u okviru njega precizirao status odredbi člana 4.3 Okvirne odluke kojima je regulisana fakultativna mogućnost odbijanja postupanja po Evropskom nalogu za hapšenje. Sud pravde je utvrdio da, u skladu sa njihovom fakultativnom prirodom, predmetne odredbe treba tumačiti što striktnije, jer bi u suprotnom bila ozbiljno dovedena u pitanje zajednička borba protiv prekograničnog kriminala. Takođe, Sud je u ovom slučaju precizirao da se fakultativni *ne bis in idem* iz člana 4.3 Okvirne odluke ne odnosi samo na krivično delo iz Evropskog naloga, već primarno na status lica u krivičnom postupku. Tako, ukoliko se u postupku pred organima države izvršenja lice pojavljivalo u svojstvu svedoka, osnova za aktivaciju *ne bis in idem* i odbijanje

Evropskog naloga za hapšenje u svetlu člana 4.3 Okvirne odluke ne postoji ukoliko se dato lice u nalogu tretira kao osumnjičeni ili optuženi. Dodatno, u slučaju ponovnog upućivanja Evropskog naloga, promena statusa lica u krivičnom postupku predstavlja dovoljnu novu činjenicu koja zahteva izjašnjenje i po ponovljenom ekstradicionom zahtevu. Time Sud pravde „tera" države članice na intenzivniju saradnju na osnovu Evropskog naloga za hapšenje i praćenje izmena svih relevantnih pravnih činjenica, pa makar i statusnog karaktera, pri realizaciji prekogranične ili transnacionalne saradnje.

Koliko god predstavljali ozbiljne korake, navedeni slučajevi su tek prvi jurisprudentni koraci postepene kristalizacije relevantnih odredbi Okvirne odluke o Evropskom nalogu za hapšenje, uključujući i primenu načela *ne bis in idem*. Uzimajući u obzir da je primena *ne bis in idem* daleko kompleksnija u prekograničnom nego u unutrašnjem pravnom kontekstu, ali i vodeći računa o značaju policijske i pravosudne saradnje u krivičnim stvarima u Uniji, za očekivati je veći aktivizam Suda pravde kako bi se, uklanjanjem eventualnih neodumica, zajednička borba protiv prekograničnog kriminala učinila efikasnijom.

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NE BIS IN IDEM AND THE EUROPAN ARREST WARRANT: VIEW THROUGH THE JURISPRUDENCE OF THE EU COURT OF JUSTICE

Summary: Subject of the paper are the most important positions of the EU Court of Justice in regard of the use of ne bis in idem legal principle as an obligatory, as well as facultative basis for the rejection of Eureopan Arrest Warrant (EAW) issued by competent authorities of other member state. In this regard, focus of the analaysis is on two main cases, Mantello from 2010 and AY from 2018, in which the Court of Justice made very important first steps in order to secure an equal interpretation and the implementation of the articles 3.2 and 4.3 of EAW Framework decion, i.e. the category of the „same act" as a precondiotion for the activation of ne bis in idem principle within crossborder or transnational context. Among other things, in the Mantello case the Court of Justice clearly underlined that the category of the same act, being an autonomous EU legal entity, stemming from articles 3.2. and 4.3. of the EAW Framework decision, can not be indivudally interpreted by the national courts of the member states. Its efforts in the AY case were directed to the reduction of the use of ne bis in idem principle in facultative manner, making point that previous in rem legal actions do not represent a trigger for the activation of ne bis in idem and the rejection of Eureopan Arrest Warrant from other member state.

Key words: ne bis in idem, Cort of Justice of the Eureopan Union, Eureopan Arrest Warrant, Framework decision, preliminary procedure, Montello, AY.

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THE PRINCIPLE OF *NE BIS IN IDEM* IN THE CONTEXT OF EUROPEAN ARREST WARRANT: A VIEW OF THE JURISPRUDENCE OF THE EUROPEAN COURT OF JUSTICE

Abstract: In this paper, we analyze the most significant ruligs of the Court of Justice of the Europian Union regarding the interpretation of the provisions of the Framework decision on the European arrest warrant which established the principle of ne bis in idem as one of the grounds for both mandatory and optional non-execution of the extradition request issued to the judicial authority of the executing Member State. Although the European arrest warrant is one of the most important mechanisms of cooperation in criminal matters between Member States, the provisions of the Framework decision that established the European arrest warrant as part of the EU law do not define precisely enough some of the key aspects of its implementation, leaving plenty of space for different interpretations and actions of national authorities, which in turn contributes to legal uncertainty and unequal application of the EU law within Member States. In this context, the European Court of Justice made some of the key points in the 2010 Mantello case and 2018 AY case, and primarily focused on issues related to the ''same act" category as one of the key criteria for applying the ne bis in idem

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principle in transnational context. The inductive-deductive method and content analysis were used in the analysis of the cases mentioned above.

Key words: cooperation in criminal matters; European Arrest Warrant; ne bis in idem; The Court of Justice of the European Union; Mantello; AY.

1. Introduction

The European Arrest Warrant (EAW) is one of the most important, but also the most delicate mechanisms of cooperation in criminal matters between Member States of the European Union. Since its adoption, and especially after the amendments in 2009[9], Framework Decision 2002/584/JHA[10], which established the European Arrest Warant as part of the EU legal system, has enabled acceleration of the extradition process of the citizens who are connected with criminal proceedings in another Member State, primarily due to considerable reduction of the double criminality principle[11], which was very common in previous acts. The court of the state executing the arrest is authorised to determine whether all procedural requirements for action have been met, without entering into the merits of a case that is pending trial or a case that is closed by the court of another Member State, making judicial cooperation under the European Arrest Warrant more flexibile and automated. However, the implementation of the Framework decision in the Member States has encountered not only constitutional, but also political obstacles, especially when it comes to extraditing their own na-

[9] Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between member states, Consolidated version of 28 March 2009: 2002F0584-EN-28.03.2009-001.001.

[10] Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between member states, OJ192, 18.7.2002, p. 1 – 20.

[11] The double criminality principle implies that the criminal offence with which a person is charged must be defined as such by both the provisions of the national law of the state of citizenship and the provisions of the state demanding extradition.

tionals. For example, the Constitutional Courts of the Federal Republic of Germany, Poland, Cyprus and the Czech Republic have made cooperation on this basis dependent upon ensuring adequate protection of human rights for persons subject to an EAW, as envisaged in their own Constitutional Acts. On the other hand, some other Member States like Britain, Malta, Portugal or Denmark relied more on political reasons when contesting requests for extradition of their own nationals (Tučić 2020, 219). These and other problems called for stronger involvement of the European Court of Justice in resolving interpretative doubts over the Framework decision, which would not only contribute to a higher level of compatibility of national implementing regulations, but would also greatly improve legal certainty in EU law. Considering the fact that the European Arrest Warrant is based on the concept of international judicial cooperation, embodied in the recognition and enforcement of foreign judgements, a particularly interesting issue is the application of the *ne bis in idem* principle which prevents national courts from executing extradition requested by another Member State. In regards to this matter, the European Court of Justice made relevant observations on two ocassions, first in the 2010 *Mantello* case (C-261/09) and then in the 2018 *AY* case (C - 268/17).

2. The *ne bis in idem* principle in the Framework decision on the European Arrest Warrant

Having roots in Roman civil law, the *ne bis in idem* principle is seen as one of the postulates of legal certainty and equity in criminal law matters, according to which a person cannot be prosecuted, i.e., convicted more than once for the same crime. In Article 3 of the Framework decision on the EAW, the *ne bis in idem* principle is provided as one of the grounds for mandatory non-execution of the EAW. Or, as stated in Article 3(2) of the Framework decision, the executing judicial authority shall reject an extradition request if "the requested person has been finally judged by a Member State in respect for the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of

the sentencing Member State"[12]. In addition to provisions of the article mentioned above, the *ne bis in idem* can be identified as a ground for refusing the execution of an extradition request by the also in Articles 4(2) and 4(3) of the Framework decision, but this time on a non-binding, discretionary basis. Article 4(2) of the Framework decision provides for the court to refuse to execute the extradition arrest warrant if the person who is the subject of the EAW is already being prosecuted for the same criminal act before the judicial authorities of the executing Member State, i.e., according to Article 4(3), if the judicial authorities of the executing Member State decide either not to prosecute for the offense on which the EAW is based or to halt the ongoing criminal proceedings against the person in question or if final judgement has been passed upon the requested person in a Member State in respect of the same acts, therefore preventing further criminal proceedings (Materljan, I. and Materljan, G. 2019, 64). This lack of clear formulation of the above provisions has left plenty of room for different interpretations, and consequently different actions of national courts, which directly compromises the principles of legal certainty and equity at the level of the European Union. Therefore, it was only a matter of time before the interpretation of these provisions would be requested from the European Court of Justice in proceedings relating to the issue referred to above.

3. The *Mantello* Case

The Italian court in Catania issued a European Arrest Warrant to the Higher Regional Court in Stuttgart against Mr. Mantello, referring to two criminal offenses: a two-year involvement in illegal drug trade within an organized criminal group, and illegal acquisition, possession, transport, sale or distribution of a controlled substance, at the

[12] Although different terminology is used, Article 54 of the Convention Implementing the Schengen Agreement contained essentially identical definitions. See: Convention Implementing the Schengen Agreement of 14 June 1985 Between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of the checks on their common borders. OJ L 239, 22.9.2000, p. 16 – 62.

same time and in the same places where the first crime was committed. The German court addressed two questions to the Court of Justice of the European Union within the proceedings relating to the issue mentioned above. The first question referred to the wording "same act" of Article 3(2) of the Framework Decision, that is, whether the concept expressed by the term "same act" should be interpreted on the basis of the national law of the executing Member State, or the law of the issuing Member State, or nevertheless on the basis of autonomously interpreted European Union law. As expected, since the Court of Justice favours a teleological interpretation which ensures a uniform application of EU law in all Member States, it has deprived national courts of the right to interpret the term "same act" in a transnational or cross-border context, in the light of domestic law, emphasizing that, as this is an autonomous category of the European Union law, only the EU Court of Justice is authorized to interpret its meaning. Also, as Article 54 of the Convention Implementing the Schengen Agreement and Article 3(2) of the Framework Decision have the same aim, the Court has pointed out that its earlier interpretations and views related to Article 54 of the Convention[13] also apply to Article 3(2) of the Framework Decision. The second question was whether the act of illegal drug trade (drug trafficking) could be treated as "same act" from Article 3(2) of the Framework Decision as a membership in an organized criminal group whose main activity is drug trafficking, especially if, as it turned out, Italian investigative bodies at the time of sentencing for illegal drug trade had had evidence that Mr. Mantello belonged to an organized criminal group, but had decided not to bring this before the court and not to initiate proceedings on this basis for reasons related to investigation and operation planning. The Court of Justice has interpreted this issue as the existence of a final judgment against the requested person as an important ground for the application of *ne bis in idem*, given that in this case, the Italian investigative bodies had had evidence for the acts covered by the European Arrest Warrant (paras. 43-44). The Court of Justice has pointed out that the question of the existence of a final judgment against the requested person for the purposes of Article 3(2) of the Framework Decision is determined on the basis of the national regulations of the Member

[13] See: ECJ, *Zoran Spasic*, 27.05.2014, C – 29/14, PPU.

State whose court rendered the judgment, and that the court decision which does not prevent further prosecution in the national legal context should not constitute an obstacle to the initiation or continuation of proceedings for the same criminal offenses in another Member State (paras. 46-47). In particular, in the present case, the Italian judicial authority, at the request of the German judicial authority, in accordance with Article 15(4) of the Framework Decision, has already stated that its previous decisions do not cover all the criminal offenses under the European Arrest Warrant and therefore the German judicial authority has no ground for the application of the principle *ne bis in idem* and refusal of extradition request (paras. 50-51). What do these views of the European Court of Justice actually mean? With regard to the first question, taking into account the marked differences in the criminal justice system between Member States, including different views on what constitutes a criminal offense, the European Court of Justice has enabled the transnational application of the *ne bis in idem* principle by depriving national courts of interpreting the term "same act" on their own. In the context of the second issue, the European Court of Justice has recognized the importance of national regulations and decisions of national judicial authorities in determining the existence of a final judgement, and has consequently transferred the legal requirements for the application of *ne bis in idem* from the national to the EU level. Or, as the Court stipulates, first the conditions for the application of a national *ne bis in idem* principle must be met, and only then can this principle be used in a transnational, EU context (Ivičević - Karas 2014, 291).

4. The *AY* case

The AY case is interesting not only because it focuses on aditional for for applying the *ne bis in idem* principe under Article 4 of the Framework Decision, but also because the European Court of Justice was addressed by the County Court in Zagreb, which conducted proceedings against two persons for bribery and corruption, namely a former high-ranking official from Croatia, and the chairman of the board of directors of a Hungarian company. The County Court, through OS-

COC[14], sent a European arrest warrant to the Hungarian side requesting the extradition of a Hungarian citizen, however, the Hungarian judicial authority refused to execute the EAW, noting that the same criminal offense had already been investigated in Hungary and had been suspended, although the requested person in this procedure had the status of a witness, not a suspect (Materljan 2019, 232). After the Hungarian authorities refused to rule on the repeated request, the County Court in Zagreb addressed the Court of Justice of the European Union in May 2017, asking for answers to a total of five questions, four of which related to the actions of the Hungarian authorities as executing authorities, while the fifth question refered to the action of the Country Court in Zagreb. The question we focus on here is whether the provisions of Article 4(3) of the Framework Decision, which provide for the optional possibility of refusing extradition on the grounds of previous withdrawal or suspension of criminal proceedings for the same act in the executing State, should be interpreted as referring only to the specific criminal offense or also to the person against whom the warrant is issued, especially if we take into account that the requested person appeared as a witness in the investigation procedure in Hungary, while in the proceedings before the County Court in Zagreb the same person appears as a suspect or accused. The European Court of Justice has pointed out that a previous withdrawal or suspension of proceedings in relation to the same criminal offense in which a person from the European Arrest Warrant appears as a witness cannot be the ground for optional non-execution of the EAW, according to Article 4(3) of the Framework Decision, if the requested person appears in the warrant as a suspect. In the Court's view, if the provisions of Article 4(3) of the Framework Decision were to be interpreted only in the context of the criminal offense and not in the context of the identity of the person concerned, it would create plenty of room for national judicial authorities to refuse to act on this important principle of the EU criminal law. Also, as the grounds for non-execution of the EAW under Article 4(3) of the Framework Decision are optional, they are an exception and must be interpreted restrictively (paras. 52-57). The investigation procedure, which was suspended by the Hun-

[14] The Office for the Suppression of Corruption and Organized Crime of the Republic of Croatia.

garian authorities, was being conducted against a person whose true identity is unknown, and not against a specific Hungarian citizen, hence this, *in rem* proceeding, cannot be used as a ground for non-execution of the extradition request issued by Croatian authorities. The court also referred to the fact that the Hungarian authorities ignored the repeated European arrest warrant, emphasizing the fact that the competent national authority is obliged to make a decision on every European arrest warrant issued to it, even if previous arrest warrants relating to the same person and the same offense had already been decided in that State, especially when another European Arrest Warrant is issued because the requested person is charged of a crime in the issuing State (paras. 32 - 36). So, regardless of the fact that the Hungarian authorities have already once rejected Croatia's extradition request, they were obliged to decide a new extradition request, for the simple reason that there has been a change in the procedural status of AY, and the suspect, after filing charges, has become a person accused of committing the criminal offense of bribery.

5. Conclusion

The European Arrest Warrant is one of the key mechanisms of judicial cooperation in criminal matters between Member States. Despite the progress that has been made in the past two decades, the implementation of the EAW still encounters various obstacles, which are especially evident when Member States are requested to extradite their own citizens suspected of a crime commited in another Member State. Member States often resort to various mechanisms to avoid the extradition procedure, including the possibilities provided in Articles 3 and 4 of the Framework Decision, especially emphasizing the importance of the *ne bis in idem* principle in a transnational context. In cases of insufficient precision of the provisions that regulate the application of this principle, which aims to protect the rights of persons suspected of cross-border criminal activities, there is a need for the European Court of Justice to interpret their meaning. Up to this time, the European Court of Justice has dealt in two cases with the issue of the conditions

for the cross-border application of the *ne bis in idem* principle in accordance with the provisions of the Framework Decision, in the 2010 Mantello's case and the 2018 AY's case.

The significance of the Mantello case is that the European Court of Justice took only one of the key conditions for the cross-border application of the *ne bis in idem* principle, and that is the existence of the „same act" and the „same actions", and exempted it from the jurisdiction of national courts and, since it is an autonomous category of the European Union law, the EU has verified itself as the exclusive interpretive authority in that context. In this way, taking into account the differences in criminal law matters between the Member States, including the differences in definitions of certain elements of criminal offenses, the Court has enabled the application of the *ne bis in idem* principle at European level, since otherwise its application would have been highly questionable. In addition, the Court has clearly stated in the Mantello case that national courts must not make procedural discrimination in the application of *ne bis in idem* in the domestic and cross-border context, and if the conditions for its application in the domestic context are met, this implies that they are met in the EU context as well. And not only that, the fulfillment of the conditions for the application of *ne bis in idem* at national level, according to the European Court of Justice, manifests itself as a kind of a „filter" for its application at transnational level.

The AY case is significant because, in deciding on it, the Court has specified the status of the provisions of Article 4(3) of the Framework Decision, which regulate the optional possibility to refuse to act on a European Arrest Warrant. The European Court of Justice has found that, in accordance with the fact that they are optional, the provisions in question should be interpreted as strictly as possible, since otherwise, the joint fight against cross-border crime would be seriously called into question. Also, the Court specified in this case that the optional *ne bis in idem* laid down in Article 4(3) of the Framework Decision does not refer only to the criminal offense from the European Arrest Warrant, but primarily to the status of a person in criminal proceedings. Thus, if a person appeared as a witness in the proceedings before the executing State, the grounds for activating *ne bis in idem* and rejecting the

European Arrest Warrant in the light of Article 4(3) of the Framework Decision do not exist if the person is treated as a suspect or accused. In addition, if the requesting State reissues the European Arrest Warrant, the change of the status of a person in criminal proceedings presents a sufficiently new fact for the executing State to decide again on a repeated extradition request. Thereby, the European Court of Justice „forces" Member States to obtain more intensive cooperation on the basis of the European Arrest Warrant and monitor changes in all relevant legal facts of cross-border or transnational cooperation, even those related to the status of the person sought.

These cases are only the first jurisprudential steps needed to gradually crystallize the relevant provisions of the Framework Decision on the European Arrest Warrant, including the application of the *ne bis in idem* principle. Given that the application of *ne bis in idem* is far more complex in a cross-border context than in a domestic one, but also taking into account the importance of police and judicial cooperation in criminal matters in the EU, greater judicial activism at the European Court of Justice is expected so that by resolving potential dilemmas the joint fight against cross-border crime can be made more effective.

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KONCEPT BRAČNOG OČINSTVA U SAVREMENOM PORODIČNOM PRAVU

Rezime: Predmet ovog istraživanja jesu pozitivna domaća i uporednopravna pravila o nastanku i prestanku dejstva pretpostavke bračnog očinstva. Očigledno je da su ona oblikovana u sadejstvu sa normama kojima je uređena bračna zajednica. Složenim i raznovrsnim čini ih to što su u pojedinim pravima momenti od kojih pretpostavka o očinstvu majčinog supružnika počinje i prestaje da važi različito određeni u odnosu na trenutak zasnivanja braka i način njegovog prestanka. Cilj je bio da se ukaže na različite mogućnosti prilikom stipulisanja pravila o utvrđivanju i osporavanju bračnog očinstva i na to kako se svaka od tih mogućnosti odražava na savremeno shvatanje roditeljstva i pravo deteta da zna svoje poreklo. Upravo sa tog stanovišta ocenjivane su i odgovarajuće norme domaćeg porodičnog zakonodavstva.

Ključne reči: bračno očinstvo, utvrđivanje bračnog očinstva, osporavanje bračnog očinstva, paternitetske parnice.

1. Uvod

Bez obzira na to što je jačanje autonomije volje uslovilo porast broja vanbračnih zajednica i slučajeva zasnivanja porodice unutar njih, brak i roditeljstvo zasnovano na njemu, kao mnogo tradicionalniji pojmovi, još uvek nisu izgubili na značaju. Međutim, ni oni ne odolevaju

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uticaju brojnih društvenih promena, već, naprotiv, prate njihovu dinamiku. Zbog toga su pravila o bračnom očinstvu aktuelna i predmet interesovanja brojnih stručnjaka. U svakom slučaju, uspostavljanje i pobijanje pretpostavke o bračnom očinstvu zavise od opredeljenja konkretnog zakonodavca u pogledu njene povezanosti sa trenutkom zaključenja i načinima prestanka braka, kao i od njegovog načelnog stava o pretežnijem uticaju biološke ili socijalne komponente roditeljstva. To su upravo oni segmenti bračnog očinstva koji iziskuju da mu se u sadašnjem vremenu posveti naročita pažnja.

U ovom radu istraživane su odredbe domaćeg Porodičnog zakona („Sl. glasnik RS", br. 18/2005, 72/2011 – dr. zakon i 6/2015[2]) kojima su propisani uslovi za zasnivanje i osporavanje bračnog očinstva, a na odgovarajućim mestima je ukazano na najznačajnije primere prakse Evropskog suda za ljudska prava[3] i rešenja predložena u nacrtu budućeg Građanskog zakonika Republike Srbije (Preuzeto 05. februara 2021. sa www.paragraf.rs/nacrti_i_predlozi/260615-nacrt_gradjanskog_zakonika[4]). Poređenjem sa komplementarnim uporednopravnim normama, ukazano je na razlike u savremenom poimanju bračnog očinstva i izloženi su opšti i poželjni pravci razvoja ovog instituta. Ovom analizom su obuhvaćena neka od evropskih prava sa najdužom tradicijom i ona sa kojima je domaće pravo istorijski povezano: nemačko, francusko, crnogorsko i hrvatsko.

U radu su pretežno korišćeni normativni, komparativni i metod analize slučaja. Cilj je bio da se ukaže na promene u konceptu bračnog očinstva u savremenom porodičnom pravu i da se one ocene s aspekta pozitivnih domaćih normi i *de lege ferenda*. Struktura rada podrazumeva razmatranje pojma bračnog očinstva, uslova za njegovo uspostavljanje i njegovo osporavanje sa materijalnog i procesnog aspekta. Konačno viđenje pravila o bračnom očinstvu u domaćem pravu i analizovanim stranim pravima sumarno je izloženo u zaključku rada.

[2] U daljem tekstu PZ.

[3] U daljem tekstu ESLJP.

[4] U daljem tekstu Prednacrt.

2. Pojam bračnog očinstva u domaćem i uporednom pravu

Bračno očinstvo jeste element porodičnog statusa deteta koji nije potpuno samostalan pojam budući da se određuje posredstvom drugih činjenica – materinstva i braka sa detetovom majkom. Zakonska definicija u srpskom pravu glasi – Ocem se smatra muž majke deteta[5]. Dovoljno je samo postojanje braka, ne zahteva se i zajednički život supružnika (Ponjavić, 2006: 255).[6] U određenim slučajevima će postojati bračno očinstvo, iako je brak, zapravo, prestao. Naime, ukoliko je dete rođeno u roku od trista dana od prestanka braka smrću majčinog muža, pod uslovom da ona u tom periodu nije zaključila novi brak, ocem će se smatrati preminuli supružnik. Ukoliko je za tim brakom usledio novi, ocem deteta će se smatrati majčin muž iz tog braka. Ukoliko je dete rođeno nakon prestanka braka razvodom ili poništenjem, bez obzira u kom roku je do toga došlo, neće biti uspostavljeno bračno očinstvo bivšeg supružnika (čl. 45 PZ-a). Razlog ovog podvojenog režima leži u pretpostavci da su bračni odnosi pre prestanka braka smrću muža-oca bili dobri, a da su pre razvoda, odnosno poništenja, bili poremećeni, tako da u takvim uslovima nije moglo doći do začeća deteta. U svakom slučaju, treba imati u vidu da očinstvo zanovano na navedenim pravilima predstavlja pravnu pretpostavku, tako da je dozvoljeno dokazivati da muškarac na koga ukazuje pravna norma zapravo nije otac.

Strana prava koja su predmet ovog istraživanja mogu se podeliti, radi lakšeg proučavanja, u dve osnovne grupe prema kriterijumu uticaja uzroka prestanka braka na dejstvo pretpostavke bračnog očinstva. Prvu čine crnogorsko i hrvatsko pravo, a drugu nemačko i francusko.

Naime, u crnogorskom pravu se (bračnim) ocem deteta smatra ne samo muž majke već i bivši muž, bez obzira da li je brak prestao njegovom smrću ili pak razvodom ili poništenjem, pod uslovom da je dete rođeno u roku od trista dana od tog momenta i da majka po prestanku ovog braka nije zaključila novi. Bivši majčin supružnik će se, ipak, smatrati ocem ukoliko uspešno bude osporeno očinstvo novog bračnog partnera (čl. 97 Porodičnog zakona Crne Gore [„Sl. list RCG", br. 1/2007

[5] U doba važenja rimskog prava: *Pater is est quem nuptiae demonstrant*.

[6] Činjenica očinstva u svakom slučaju, pa i u ovom, da bi proizvela pravno dejstvo, mora biti upisana u matičnu knjigu rođenih za dete.

i „Sl. list RCG", br. 53/2016 i 76/20][7]). Očigledno je reč o pravilu formulisanom u interesu deteta da u svakom trenutku ima utvrđeno očinstvo. Crnogorsko pravo sadrži i specifično pravilo po kome će i dete koje bi se inače smatralo vanbračnim, ipak, imati status bračnog ukoliko njegovi roditelji naknadno zaključe brak (čl. 98 PZ CG). Čini se da je reč o pomalo arhaičnom pravilu, koje u današnjim uslovima potpune izjednačenosti bračne i vanbračne dece nije od naročitog značaja.

U hrvatskom pravu, poput crnogorskog, reč je o bračnom očinstvu kada je dete rođeno u toku trajanja braka, ali i u roku od trista dana od njegovog prestanka na bilo koji način. Ukoliko u tom roku od trista dana od prestanka braka smrću muža majka zaključi novi brak, ocem će se smatrati muž iz tog braka. Međutim, hrvatski zakonodavac je posebno vodio računa o specifičnosti ove životne situacije, pa je dopustio mogućnost konstituisanja pretpostavke očinstva u korist drugog muškarca, koji bi uz saglasnost majke i njenog muža priznao očinstvo (Čl. 61 Obiteljskog zakona [NN 103/15, preuzeto 10. februara 2021. sa https://www.zakon.hr/z/88/Obiteljski-zakon][8]).

U nemačkom pravu, kao što je nagovešteno, izražena je razlika između situacije u kojoj je dete rođeno nakon smrti bivšeg majčinog muža i one u kojoj je do rođenja došlo nakon razvoda ili poništenja braka. S tim u vezi, ukoliko je dete rođeno u roku od trista dana od prestanka braka smrću muža, pod uobičajenim uslovom da majka u međuvremenu nije zaključila nov brak, ocem deteta će se smatrati nov muž (§ 1592 Nemačkog građanskog zakonika [Deutsches Bürgeliches Gesetzbuch], preuzeto 15. februara 2021. sa http://www.gesetze-im-internet.de/englisch_bgb/[9]). I nemački zakonodavac je posebnu pažnju posvetio interesu deteta da, kad god je to moguće, dejstvuje pretpostavka očinstva lica za koje postoji makar minimalni stepen verovatnoće da zaista jeste otac, pa važi pravilo da će u slučaju osporavanja očinstva novog muža, biti uspostavljeno očinstvo bivšeg muža (§ 1593 BGB-a).

Pretpostavka bračnog očinstva je u francuskom pravu oblikovana na kreativniji način, pa se bračnim smatra dete bilo začeto bilo

[7] U daljem tekstu PZ CG.

[8] U daljem tekstu OZ RH.

[9] U daljem takstu BGB.

rođeno u toku trajanja braka (čl. 312 Code civil, preuzeto 15. februara 2021. sa https://www.trans-lex.org/601101/_/french-civil-code-2016/[10]). Prema postojećim naučnim saznanjima o mogućem trajanju trudnoće, smatra se da je dete začeto u periodu od trista do sto osamdeset dana pre njegovog rođenja (čl. 311 CC-a). Ukoliko je dete rođeno u roku dužem od trista dana od pokretanja parnice za rastavu supružnika ili za razvod braka, pretpostavka bračnog očinstva neće važiti. Isto važi i ukoliko je dete rođeno u roku kraćem od sto osamdeset dana od odbacivanja tužbe u ovim parnicama, odnosno od pomirenja supružnika. Ipak, ukoliko nije utvrđeno očinstvo drugog muškarca, a postoje činjenice, poput uzajmanog ponašanja, koje ukazuju na to da je očigledno da je majčin muž detetov otac, on će uživati takav status (čl. 313 CC-a). Pretpostavka bračnog očinstva neće proizvoditi dejstvo kada muškarac na koga brak sa detetovom majkom ukazuje nije upisan kao otac u javni registar niti uživa očigledan roditeljski status u odnosu na dete (čl. 314 CC-a). Posledica pravila o derogiranju ove pretpostavke sastoji se u mogućnosti utvrđivanja bračnog očinstva sudskim putem (čl. 315 CC-a). Zaključuje se da je francuski zakonodavac uložio posebne napore nastojeći da pravne norme o bračnom očinstvu prilagodi raznim životnim situacijama.

3. Osporavanje bračnog očinstva

3.1. Domaće pravo

Kao što smo već napomenuli, očinstvo zasnovano na braku sa detetovom majkom predstavlja oborivu pravnu pretpostavku, pa je dopušteno njegovo osporavanje, tj. ukazivanje na to da detetov otac nije ono lice na koje upućuje pravna norma, već neko drugo. S obzirom na to da je reč o izuzetno osetljivoj sferi u kojoj se prepliću interesi deteta, majke, pretpostavljenog i biološkog oca, mogućnosti za njegovo osporavanje nisu svuda iste. Tako negde preovlađuje socijalna komponenta roditeljstva, a negde biološka. U literaturi ima suprotnih stavova, pa pojedini autori smatraju da je nepostojanje posebnih uslova za osporavanje bračnog očinstva od strane muškarca koji sebe smatra biološkim ocem

[10] U daljem tekstu CC.

u duhu savremenog porodičnog prava (Kovaček Stanić, 2013). S druge strane su oni koji smatraju da osnovni uslov za osporavanje očinstva u ovom slučaju treba da bude izražena namera pomenutog lica da se o detetu stara u svemu kao otac (Novaković, 2017). Autor ovog rada je pristalica prvobitno izloženog stanovišta i zalaže se za jedinstveni pojam očinstva (bez njegovog rastavljanja na socijalni i biološki element), koji je omeđen propisanim uslovima za njegovo uspostavljanje i osporavanje. U prilog tome, ukazuje se i na praksu Evropskog suda za ljudska prava koji je u više navrata bio u prilici da se izjašnjava o ovom pitanju. Naime, ovaj sud je u predmetu *Mandet v. France*[11] istakao da je u interesu deteta da zna svoje poreklo, a da se integritet uspostavljenih porodičnih odnosa može zaštititi odlukom o poveri deteta na staranje majci, kao biološkom roditelju koji se i do tada starao o njemu, i kroz pravo na održavanje ličnih odnosa između deteta i muškarca koga je ono do tada smatralo ocem. Takođe, čitave dve decenije ranije, u predmetu *Kroon and Others v. Netherlands*[12], ESLJP je naveo da se pretpostavka bračnog očinstva ne može posmatrati apstraktno kada ona, zapravo, ne služi ničijim interesima, a naročito ne detetovim. Sud u Strazburu je istakao da porodični život nastaje već u momentu rođenja deteta i da domaći organi treba da posvete dužnu pažnju uspostavljanju pravne veze između deteta i njegovih roditelja čim to postane moguće.

U srpskom pravu, parnicu za osporavanje očinstva mogu pokrenuti dete, majka, njen muž, tj. muškarac koji se smatra ocem, i muškarac koji ističe činjenicu svog očinstva. Za muškarca koji sebe smatra ocem, kao tužioca, važe posebna pravila. Naime, neophodno je da on u istoj parnici u kojoj osporava očinstvo muškarca upisanog u matičnu knjigu rođenih zahteva da se utvrdi da je on otac (čl. 56 PZ-a). Ovo pravilo je sasvim opravdano jer, u svakom slučaju, nije u interesu deteta da dođe do prekida kontinuiteta u pogledu utvrđenog očinstva nad njim, bez obzira na to da li je pravno stanje podudarno biološkim činjenicama ili ne. Osim toga, u odsustvu ovog pravila bilo bi racionalno postaviti pitanje pravnog interesa za osporavanje očinstva od strane muškarca koji nema želju da preuzme roditeljsku ulogu. Dete je jedini subjekt koji

[11] Case 30955/12 [2016].

[12] Case 00018535/91 [1994].

parnicu za osporavanje očinstva može pokrenuti bez obzira na bilo koji rok (čl. 251 st. 1 i čl. 252 st. 1 PZ-a). Za ostala lica važi subjektivni rok od godinu dana, odnosno objektivni rok od deset godina, računajući od rođenja deteta (čl. 252 st. 2, 3, 4 i 5 PZ-a). Prema predlogu iz odredbe sadržane u čl. 2501 Prednacrta, postoji mogućnost ukidanja rokova za pokretanje parnica ove vrste od strane svih aktivno legitimisanih subjekata. Ovakav pristup ne podržavam, jer smatram da nije u interesu pravne izvesnosti.

3.2. Uporedno pravo

Pravila crnogorskog prava ne odudaraju značajnije od srpskih. Međutim, za razliku od srpskog prava, u crnogorskom pravo deteta na osporavanje bračnog očinstva jeste vremenski ograničeno, budući da se može vršiti do navršene dvadeset treće godine života. Rokovi u kojima druga ovlašćena lica mogu preduzeti odgovarajuću radnju takođe su kraći u poređenju sa srpskim pravom. Tako majka može pokrenuti ovu paternitetsku parnicu u roku od svega šest meseci od rođenja deteta, muškarac koji sebe smatra ocem u dvostruko dužem roku, a majčin muž u roku od šest meseci od saznanja da nije otac, ali ne i nakon navršene detetove pete godine života (čl. 109, 113 i 115 PZ CG).

Hrvatsko pravo sadrži jednu novinu, u odnosu na do sada analizovana prava, a ona se ogleda u suženom krugu aktivno legitimisanih subjekata za osporavanje bračnog očinstva. Naime, ovaj krug čine dete, majka i njen muž (čl. 79 st. 1 OZ RH). Muškarac koji sebe smatra ocem izostavljen je jer se njegovo očinstvo, kao što je već napomenuto, može zasnovati priznanjem, uz saglasnost majke i njenog muža, odnosno u sudskom postupku, u odsustvu ovih saglasnosti. Poput crnogorskog prava, i u hrvatskom je rok u kome dete može pokrenuti paternitetsku parnicu za osporavanje bračnog očinstva ograničen, ističe navršavanjem dvadeset pete godine života. Majka isto ovlašćenje može vršiti u kratkom roku od šest meseci od rođenja deteta, a njen muž u subjektivnom roku iste dužine, koji je omeđen objektivnim rokom, tj. navršenom detetovom sedmom godinom života (čl. 400, 401 i 404 OZ RH).

Nemačka pravila o osporavanju bračnog očinstva zaslužuju naročitu pažnju. Naime, ovlašćena lica za osporavanje vanbračnog očin-

stva jesu dete, majka, njen muž i muškarac koji sebe smatra ocem. Za ovo poslednje lice važe posebna pravila, pa će ono moći da preduzme odgovarajuću radnju samo ukoliko pod zakletvom izjavi da je u kritičnom periodu održavalo intimne odnose sa detetovom majkom i ukoliko između deteta i muškarca koji je upisan kao otac nisu izgrađene čvrste porodične veze. Smatraće se da ove veze postoje ako je ovo lice u kritičnom periodu vršilo roditeljska prava i dužnosti prema detetu (§1600 st. 1, 2 i 4 BGB-a). U nemačkom pravu važi subjektivni rok od dve godine za pokretanje ove parnice, s određenim privilegijama kada su u pitanju dete i lice lišeno poslovne sposobnosti (§1600b BGB-a). S obzirom na sužene mogućnosti za osporavanje bračnog očinstva u nemačkom pravu, ne iznenađuje činjenica da su ova pravila bila predmet razmatranja i od strane Evropskog suda za ljudska prava. Izdvajam najpre negativnu odluku ovog suda donetu u predmetu *Fröhlich v. Germany*[13]. Podnosilac predstavke, kao biološki otac, zatražio je zaštitu pred ovim sudom jer mu domaći sudovi nisu uslišili zahtev za osporavanje bračnog očinstva nad devojčicom koja je začeta u toku njegove vanbračne veze sa njenom majkom, koja je istovremeno bila u braku sa drugim muškarcem. Njegova namera je bila da se nakon osporavanja bračnog očinstva i utvrđivanja vanbračnog stara o svojoj ćerki. Odbijen je njegov zahtev za ostvarivanje kontakata sa devojčicom jer prethodno nije utvrđeno njegovo očinstvo, što i nije bilo moguće zbog postojanja čvrstih veza između nje i njenog zakonskog oca. Domaći sud je u obrazloženju svoje odluke naveo da osporavanje bračnog očinstva ne bi bilo u najboljem interesu deteta jer bi dovelo do narušavanja postojećih porodičnih odnosa. Upravo je iz tog razloga i ESLJP procenio da je podnosiočeva predstavka neosnovana. Ipak, drugačiji ishod je imala predstavka podneta u predmetu *Schneider v. Germany*[14]. U poređenju sa prethodno analizovanom odlukom suda, razlika je postojala u tome što domaći sud uopšte nije ocenjivao da li je u interesu deteta da održava kontakte sa muškarcem za koga je postojala sumnja da je njegov biološki otac. Osim toga, ESLJP je posebno cenio to što su podnosilac i detetova majka bili u određenom periodu u zajednici, da je on u toku njene trudnoće ispoljavao brigu za nju i dete i

[13] Case 16741/2016 [2019].

[14] Case 61595/2015 [2018].

da je u kratkom roku nakon rođenja deteta pokrenuo odgovarajući postupak. Istovetno obrazloženje suda je prethodilo u predmetu *Anayo v. Germany*[15]. Sud je i tada ukazao na značaj procenjivanja najboljeg interesa deteta u konkretnim okolnostima i naročito istakao uticaj činjenice da biološki otac – podnosilac predstavke – nije bio u mogućnosti da se stara o blizancima koje je smatrao svojom decom iz razloga koji mu se nisu mogli pripisati u krivicu, tj. usled protivljenja njihove majke i njenog muža – pretpostavljenog oca. Naglašeno je da nemački sudovi moraju procenjivati u svakom slučaju da li je u interesu deteta da održava lične odnose sa potencijalnim biološkim ocem, koji u konkretnim okolnostima, prema nemačkim pravilima, nije mogao da sudskim putem najpre ospori postojeće bračno očinstvo, a potom zahteva utvrđivanje svog očinstva.

U francuskom pravu je krug aktivno legitimisanih subjekata za pokretanje parnice za osporavanje očinstva određen najšire moguće. Načelno, očinstvo mogu osporavati dete, majka, pretpostavljeni otac i muškarac koji sebe smatra ocem (čl. 333 st. 1 CC-a). Ukoliko odnos između oca i deteta, uspostavljen upisom u javni registar, postoji i u realnosti, ovo pravo se može ostvariti u roku od pet godina od kad je prestalo da bude očigledno da je određeni muškarac detetov otac. Međutim, ako je zakonski otac vršio roditeljska prava i dužnosti prema detetu u periodu dužem od pet godina od rođenja deteta, njegov status se ne može osporavati. Ako je pak odnos oca i deteta zasnovan samo na upisu u javnu evidenciju i u realnosti zapravo ne postoji, očinstvo mogu osporavati sva zainteresovana lica i to u roku od deset godina od trenutka njegovog uspostavljanja (čl. 334 st. 1 CC-a). Ukoliko je očigledan očinski status konstatovan u potvrdi izdatoj od strane nadležnog organa u propisanom postupku, isti može biti opovrgnut u roku od pet godina od izdavanja takve isprave (čl. 335 CC-a). Naročito je važno ovlašćenje javnog tužioca da osporava očinstvo u slučaju sumnje da je stanje iz javne evidencije neistinito, odnosno da je došlo do izigravanja zakona (čl. 336 CC-a).

[15] Case 20578/2007 [2010].

4. Zaključak

Značaj istraživanja domaćih i uporednopravnih pravila o bračnom očinstvu proizlazi iz činjenice da razlike među njima mogu biti znatne i da kao takve utiču na ostvarivanje velikog broja prava i dužnosti iz domena porodičnog prava. Između njih i velikog broja prava deteta, među kojima je i pravo na saznanje porekla, postoji direktna veza i zbog toga treba posvetiti posebnu pažnju njihovom formulisanju i eventualnim izmenama.

Analizujući domaće pravo i relevantna strana prava, ustanovila sam da se najznačajnije razlike u konceptu bračnog očinstva ispoljavaju u načinu na koji je oblikovana pretpostavka bračnog očinstva i u uslovima za njegovo osporavanje. Naime, pretpostavka bračnog očinstva dejstvuje i u određenom periodu nakon prestanka braka, ali nemaju svuda svi uzroci takvog njegovog ishoda podjednak značaj. Tako u pojedinim porecima postoji razlika između prestanka braka protivno volji supružnika, tj. smrću muža i njegovog okončanja razvodom ili poništenjem. U drugim zakonodavstvima ove razlike nema, već je režim bračnog očinstva u tom smislu jedinstven. Osim toga, u pojedinim pravima su uslovi za osporavanje bračnog očinstva izuzetno liberalno stipulisani, dok se u drugima vodi računa o čvrstini porodičnih veza između deteta i pretpostavljenog oca i razlozima zbog kojih se biološki otac nije starao o detetu. Na procesnom terenu, najveća razlika između analizovanih domaćih i uporednopravnih normi ogleda se u krugu aktivno legitimisanih subjekata i rokovima u kojima oni mogu pokrenuti paternitetsku parnicu za osporavanje bračnog očinstva.

Nakon sagledavanja svih izloženih razlika, zaključila sam da su domaća pravila o bračnom očinstvu u duhu savremenog porodičnog prava i da je njima ostvarena ravnoteža između interesa deteta, ali i njegovih pretpostavljenih, odnosno bioloških roditelja. U tom smislu, podržavam uspostavljanje bračnog očinstva rođenjem deteta u propisanom roku nakon smrti muškog supružnika, ali ne i nakon razvoda ili poništenja braka, upravo zbog pretpostavljene različite prirode supružničkih odnosa pre nastanka ovih događaja. Smatram takođe da je u interesu deteta spoznavanje istine o njegovom poreklu i da iz tog razloga, ali i sa stanovišta interesa biološkog oca, uslovi za osporavanje

bračnog očinstva treba da budu postavljeni bez posebnih ograničenja. Mišljenja sam, najzad, da istom cilju doprinose i subjektivni i objektivni rokovi odgovarajuće dužine u kojima ovlašćena lica mogu sudskim putem osporavati bračno očinstvo, a naročito vremenski neograničeno pravo deteta za preduzimanje takve radnje.

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THE CONCEPT OF MARITAL PATERNITY IN MODERN FAMILY LAW

Summary: The subject of this research are positive domestic and comparative rules on the constitution and termination of the presumption of marital paternity. It is obvious that they are related with the norms that regulate the marriage. What makes them complex and diverse is that in certain legislations the moments from which the presumption of paternity of the mother's spouse begins and ends are determined differently in relation to the moment of foundation and the cause of termination of marriage. The goal was to point out the different possibilities when stipulating the rules on establishing and disputing marital paternity and how each of these possibilities reflects on the modern concept of parenthood and the child's right to know his or her origin. It is from this point of view that the relevant norms of domestic family legislation have been valued.

Key words: marital paternity, determination of marital paternity, contestation of marital paternity, paternity lawsuit.

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THE CONCEPT OF MARITAL PATERNITY PRESUMPTION IN MODERN FAMILY LAW

Abstract: This paper deals with positive domestic and comparative international laws on establishing and contesting the marital presumption of paternity. It is evident that these rules derive from the provisions that regulate marriage. What makes them complex and diverse is that in certain legal systems the moments from which the presumption of paternity of the mother's spouse begins and ends are determined differently in relation to the moment of conclusion of marriage and the cause of termination of marriage. The aim of this paper is to point out different possibilities when stipulating the rules on establishing and contesting marital presumption of paternity and how each of these possibilities reflects on the modern concept of parenting and the child's right to know his or her origin. It is from this point of view that the relevant norms of domestic family legislation have been valued.

Key words: marital paternity presumption, determination of marital paternity, contesting marital paternity, paternity lawsuit.

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1.Introduction

Regardless of the fact that growing autonomy of will has caused the number of cohabiting partnerships and cohabiting parents to rise, marriage and married parents, as more traditional terms, still have not lost their significance. However, even these traditional concepts cannot resist the effect of many social changes, but, in fact, follow their dynamic. Consequently, the marital presumption of paternity is a current issue and subject of interest for many family law experts. Establishing and contesting marital presumption of paternity depends on the preference of the legislature in relation to the moment of conclusion of marriage and the ways the marriage was terminated, but also on the legislator's position regarding the predominance of biological or social components of parenting. These are precisely the segments of marital paternity presumption that require special attention nowadays.

This paper explores the provisions of domestic Family law (Official Gazette of the Republic of Serbia, number 18/2005, 72/2011- state act and 6/2015) which prescribe the conditions for establishing and contesting marital paternity presumption. In addition to this, the paper offers the most valuable examples of practice of the European Court of Human Rights and decisions proposed in the draft version of the Civil Code of the Republic of Serbia (Accessed 5 February 202, www.paragraf.rs/nacrti_i_predlozi/260615-nacrt_gradjanskog_zakonika). By engaging in comparative analysis of complementary international legal norms, the paper indicates differences in contemporary understanding of the marital paternity presumption and lists both common and preferable directions of development of this mechanism. This analysis encompasses some European laws with a very long tradition, as well as those laws with which Serbian legal system is historically linked: German, French, Montenegrin and Croatian.

This paper uses mostly normative methodology, comparative methodology and a case study methodology. The aim is to indicate changes in the concept of marital paternity presumption in modern Family Law and to evaluate these changes from the aspect of positive domestic legal norms and *de lege ferenda*. The paper is structured around the discussion about the concept of marital presumption of paternity

and the conditions for establishing and contesting marital paternity presumption, from both the material and the procedural aspect. Our conclusions on the marital presumption of paternity in domestic and international laws are drawn in the final section of the paper.

2. The concept of marital paternity presumption in domestic and comparative law

Marital presumption of paternity is an element of the family status of a child that is not a completely independent concept, considering that it is determined through other facts, such as maternity and marriage with the child's mother. The legal definition in Serbian Family Law is: the husband of the child's mother shall be considered the father of the child born in marriage[17]. The existence of marriage is enough by itself, there is no need for spouses to live together (Ponjavić, 2006, p.255)[18]. In specific cases, marital presumption of paternity exists, even though marriage is terminated. Namely, if a child is born within 300 days after the termination of marriage, if the marriage was terminated due to death of the mother's spouse, provided that the mother had not concluded another marriage in the meantime, the deceased spouse of the mother will be considered the father of the child. If, however, that marriage was followed by another one, the father of the child will be the mother's spouse from the subsequent marriage. If a child is born after the termination of marriage by a divorce or an annulment, regardless of any time limits, the marital presumption of paternity of the former spouse will not be established (Article 45 of the Family Law). The reasoning behind this dual-mode approach lies in the presumption that the quality of marital relationship before the termination of marriage by the death of the spouse/father is good, and that the quality of relationship before the termination of marriage by a divorce, or an annulment, is poor, which makes conceiving a child very difficult. In any case, what should be kept in mind is that paternity based on the stated rules is

[17] At the time of Roman law: *Pater is est quem nuptiae demonstrant*.

[18] In order for paternity to be legally recognized in any case, including this one, it has to be registered at the Register of Births.

considered a legal presumption, therefore it is allowed to contest the paternity of the man to whom the legal norm points.

For the purpose of easier analysis, foreign laws which are the subject of this research, can be divided into two basic groups, based on the cause of termination of marriage and its effect on the marital presumption of paternity. The first group is made up of Montenegrin and Croatian laws while the second group consists of German and French laws.

Under Montenegrin law, namely, the (marital) father of the child is considered to be not only the spouse of the child's mother but also the former spouse, regardless of the fact that the marriage was terminated due to his death or by a divorce or an annulment, provided that the child was born within 300 days after the termination of marriage and that the mother had not concluded another marriage in the meantime. The former spouse of the child's mother will, in fact, be considered the father only if the paternity of the new spouse is successfully disproved (Article 97 of the Family Law of Montenegro (Official Gazette of the Republic of Montenegro No. 1/2007, Official Gazette of the Republic of Montenegro No. 53/2016 and 76/20))[19]. Evidently this is a rule formulated in the best interests of the child so that in any moment he/she has a determined paternity. Montenegrin law contains a specific provision which prescribes that a child born in a common law marriage shall be considered born within marriage if his/her parents subsequently enter into a marriage (Article 98 FLM). This provision seems a bit archaic bearing in mind that children are nowadays granted full equality regardless of the marital status of their parents.

Under Croatian law, just like under Montenegrin law, we talk about marital presumption of paternity when the child is born within marriage, or within 300 days after its termination in any way. If within those 300 days after the termination of marriage the mother concludes a new marriage, the current spouse will be considered the father of the child. However, Croatian legislators have paid special attention to the specifics of this life situation, which is why they have allowed the possibility of establishing the presumption of paternity in favour of another man, who would acknowledge paternity with the prior consent of the child's moth-

[19] Hereafter FLM

er and her spouse (Article 61 of the Family Act (NN 103/15, accessed 10 February 2021, https://www.zakon.hr/z/88/Obiteljski-zakon)[20]).

Under German law, as mentioned earlier, the difference is made between the situation in which the child was born after the death of the mother's former spouse and the one in which the child was born after a divorce or an annulment of the marriage. With that in mind, if the child is born within 300 days of the termination of marriage due to the death of the spouse, on the condition that the mother did not conclude a new marriage, the new spouse will be considered the father of the child (§ 1592 German Civil Code Deutsches Bürgeliches, Gesetzbuch, accessed 15 February 2021, http://www.gesetze-im-internet.de/englisch_bgb/[21]). German legislators also paid special attention to the interests of the child so that whenever there is even a slight possibility that a person is indeed the father of the child, the presumption of paternity applies, hence the provision stating that in case of contesting and disproving the paternity of the new spouse, the paternity of the former spouse will be established (§ 1593 BGB).

The presumption of marital paternity under French law is shaped in a more creative way, so that a marital child is considered the one that was born within marriage (Art. 312 Code civil, accessed 15 February 2021, https://www.trans-lex.org/601101/_/french-civil-code-2016/)[22]. Taking into account the possible length of pregnancy, it is considered that the child is conceived in the period between 300 and 180 days prior to its birth (Art. 311 CC). If, however, the child was born after 300 days since the initiation of divorce proceedings, the presumption of marital paternity will not be valid. The same goes if the child is born within 180 days after the petition for divorce was dismissed, or after the reconciliation of the spouses. However, if the paternity of another man is not determined, and there are presumptions, like the behavior of spouses, which indicate that the mother's spouse is the child's father, he will enjoy such status (Art. 313 of CC). The presumption of marital

[20] Hereafter FAC

[21] Hereafter BGB

[22] Hereafter CC

paternity will have no legal effect when the man married to the child's mother is not registered as a father in the public register nor does he enjoy obvious parental status in relation to the child (Art. 314 of CC). The consequence of contesting this presumption is the possibility of establishing marital paternity by decision of court (Art. 315 of CC). We can conclude here that French legislators have made special efforts trying to adapt their legal norms on marital paternity presumption to various life situations.

3. Marital paternity dispute

3.1. Domestic law

As we already mentioned, paternity based on the marriage with the child's mother represents a rebuttable legal presumption, so it is allowed to dispute it, i.e. to point out that the child's father is not the person referred to by the legal norm, but someone else. Given that this is an extremely sensitive sphere in which the interests of the child, the mother, the presumed and the biological father are intertwined, the possibilities for challenging paternity are not the same everywhere. Thus, in some legal systems it is the social component that prevails, while in others the biological component of parenting is the one that counts. Literature review also shows opposing viewpoints on this topic. Some authors believe that the lack of special conditions for challenging marital presumption of paternity by a man who considers himself a biological father of the child is better suited for contemporary society and modern family law (Kovaček Stanić, 2013). On the other hand, there are those who believe that the basic condition for contesting paternity in this case should be the expressed intention of the said person to take care of the child as a father (Novaković, 2017). The author of this paper is a supporter of the initially stated position and advocates a synthesized concept of fatherhood (without its separation into the social and biological father), which in turn is limited by the prescribed conditions for its establishing and contesting. In addition, we would hereby like to stress the practice of the European Court of Human Rights, which has on several occasions had the opportunity to make decisions on this issue. Name-

ly, in the case *Mandet v. France*[23] the court pointed out that it is in the child's interest to know his origin, and that the integrity of the established family relations can be protected by the decision to entrust the child to the mother, as the biological parent who has already been taking care of him and by granting the child the right to maintain a relationship with the man who he has considered his father. Also, two decades earlier, in the case of *Kroon and Others v. the Netherlands*[24], the ECHR stated that the presumption of marital paternity cannot be viewed as an abstract category, when it does not actually serve anyone's interests, and especially not the interests of the child. The court in Strasbourg pointed out that family life begins at the moment of the child's birth and that the domestic authorities should pay due attention to establishing a legal relationship between the child and his parents as soon as possible.

Under Serbian law, a lawsuit to contest paternity can be initiated by the child, the mother, mother's spouse i.e. the man who is considered to be the father, and the man who claims to be the father of the child. Special rules apply in cases when a presumed father initiates a paternity dispute. Namely, in this case, the claimant contests the paternity of a man registered in the birth register as the child's father while at the same time trying to convince the court that he in fact is the father of the child (Article 56 of the Family Law). This rule is completely justified, since it is never in the interest of the child to break the continuity of established legal paternity, regardless of whether the legal situation corresponds to biological facts or not. Moreover, in the absence of this rule, one would have to raise the issue of legal interest in challenging paternity by a man who has no desire to take on parental duties and responsibilities. A child is the only subject who has the right to action to establish or contest paternity regardless of any time limit (Article 251, paragraph 1 and Article 252, paragraph 1 of the Family Law). For other persons, the subjective time limit of one year applies, i.e. the objective time limit of ten years from the birth of the child (Article 252, paragraphs 2, 3, 4 and 5 of the Family Law). According to the proposal from the provision contained in Article 2501 of the draft version, there is a possibility of abolishing

[23] Case 30955/12 [2016].

[24] Case 00018535/91 [1994].

time limits for initiating litigation of this type by every person involved in it. I do not support this approach, since I believe that it is not in the interest of legal certainty.

3.2 Comparative law

The provisions of Montenegrin law do not differ significantly from the Serbian ones. However, unlike the Serbian law, the Montenegrin law, prescribes that the right of a child to file action for determining paternity is limited in time, since it can be exercised until the child reaches the age of 23. The time limits within which other authorized persons can take appropriate action are also shorter compared to Serbian law. Thus, the mother can initiate this paternity lawsuit within only six months of the child's birth, the man who claims to be the father of the child is given a year to do the same, and the mother's husband can file a complaint for denying paternity within six months from the day he learns that he is not the father, but not after the child reaches 5 years of age (Articles 109, 113 and 115 of the FLM).

Compared to the laws analyzed so far, Croatian law contains one novelty, and it is reflected in the reduced number of subjects entitled to challenge marital paternity presumption. Namely, this group of subjects consists of a child, a mother and her husband (Article 79, paragraph 1 of the FAC). A man who considers himself the father of the child is left out because his paternity, as already mentioned, can be based on confession, with the consent of the mother and her husband, or it can be established through a paternity case, in the absence of such consents. The time limit within which a child can initiate a paternity lawsuit to challenge marital presumption of paternity is limited under Croatian law, just like under Montenegrin law, and it expires when the child reaches the age of 25. The mother can exercise the same right within a period of six months from the birth of the child, while her spouse can do the same within a subjective period of the same length, which is limited by an objective period, i.e. when child reaches 7 years of age (Articles 400, 401 and 404 of the FAC).

German laws on challenging marital presumption of paternity deserve special attention. Namely, the persons entitled to challenge extramarital paternity are a child, a mother, her spouse and a man who claims to be the father of the child. Special rules apply to the last person mentioned, as he will be able to take appropriate action only if he declares under oath that he maintained intimate relationship with the child's mother during the critical period, and if no strong family ties have been built between the child and the man registered as the father. These ties will be deemed to exist if this person has exercised parental rights and duties towards the child during the critical period (§ 1600, point 1, 2 and 4 of the BGB). Under German law, a subjective time limit for initiating this litigation is two years, with certain privileges allowed when the person bringing a lawsuit is a child or a person deprived of legal capacity (§1600b BGB). Given the narrowed down possibilities for challenging marital presumption of paternity under German law, it is not surprising that these rules have also been the subject of examination by the European Court of Human Rights. Firstly, I would like to single out a negative decision of this court rendered in the case of *Fröhlich v. Germany*[25]. The applicant, as the biological father, requested protection before this Court because domestic courts had refused to grant him permission to challenge the marital paternity of the girl conceived during his extramarital relationship with the child's mother, who was at the time married to another man. His intention was to rebut the marital presumption of paternity and establish his paternity so that he can take care of his daughter. His request to maintain contact with the girl was rejected, because his paternity had not been established earlier, which was not possible due to the existence of strong family ties between the girl and her legal father. In explaining the reasoning behind the decision, the domestic court stated that challenging the marital paternity would jeopardise the child's best interests, because it might cause the child's nuclear family to break up. It is for this reason that the ECHR found that the applicant's request was manifestly unfounded. However, the application filed in *Schneider v. Germany*[26], had a somewhat differ-

[25] Case 16741/2016 [2019].

[26] Case 61595/2015 [2018].

ent outcome. Compared to the previously analyzed court decision, the difference is that the domestic court did not examine at all whether it was in the child's best interest to maintain contact with the man who claimed to be the child's father since it was not even established that the applicant was the child's biological father. On the other hand, the ECHR particularly valued the fact that the applicant and the child's mother had been cohabiting for some time, that he had cared for her and the child during her pregnancy and that he had initiated appropriate proceedings shortly after the child's birth. The same reasoning of the court was applied in the earlier case of *Anayo v. Germany*[27]. This time again the Court stressed the importance of examining the best interests of the child in specific circumstances, and particularly emphasized the importance of the fact, that the applicant, being the biological father, had not been able to care for the twins he considered his children, for reasons that cannot be attributable to the applicant. i.e. due to the opposition from the children's mother and her husband - the legal father. The Court emphasized that German domestic courts must examine in each case whether it is in the best interests of the child to maintain contact with the potential biological father, who in this particular case, according to German laws, was not allowed to challenge the marital presumption of paternity first and then proceed to establish his paternity of children.

Under French law, a group of persons who are entitled to initiate litigation to challenge paternity is determined very widely. In principle, paternity can be challenged by a child, a mother, a presumed father and a man who considers himself a father (Article 333 § 1 CC). If the father-child relationship, established by signing the birth register, also exists in reality, this right can be exercised within five years from the moment when it ceased to be obvious that a certain man is the child's father. However, if the legal father has exercised parental rights and duties towards the child for a period longer than five years from the birth of the child, his status cannot be disputed. If the father-child relationship is based only on registration in the public records but does not exist in reality, paternity can be disputed by all interested persons, within ten years from the moment of its establishment (Article 334, paragraph 1 of the CC). If the paternal status is obviously stated in the certificate

[27] Case 20578/2007 [2010].

issued by the competent authority in the prescribed procedure, it can be revoked within five years from the date of issuance of such a document (Article 335 of the CC). It is especially important to mention the authority of the public prosecutor to challenge paternity in case of suspicion that the situation from the public records is untrue, i.e. that the law has been circumvented (Article 336 of the CC).

4. Conclusion

The importance of researching domestic and comparative laws on marital presumption of paternity is based on the fact that differences between them can be significant and as such can affect the exercise of a large number of rights and duties in the field of family law. There is a direct connection between these laws and a large number of children's rights, including the right to know the origin, which is why special attention should be paid to their formulation and possible changes.

Analyzing domestic and relevant foreign laws, I have found that the most significant differences in the concept of marital paternity presumption are manifested in the way in which it is formed and in the conditions for disputing it. Namely, the presumption of marital paternity also applies for a period of time after the termination of the marriage, but not all the causes of such an outcome are equally important everywhere. Thus, in some legal systems, there is a difference between the termination of marriage against the will of the spouses, i.e. the death of the spouse and its termination by a divorce or an annulment. There is no such difference in other legislations, in which the regime of marital paternity is unique in that sense. In addition, in some legislations the conditions for challenging marital paternity presumption are construed very liberally, while others value the strength of family ties between the child and the presumed father as well as the reasons why the biological father had not been taking care of the child. Procedurally, the biggest difference between the analyzed domestic and comparative laws is reflected in the group of persons entitled to challenge marital presumption of paternity and the time limits within which they can initiate a paternity lawsuit to challenge marital paternity.

After considering all the differences, I hereby conclude that domestic legal provisions on marital paternity presumption are in accordance with modern family law and that they aim to strike a balance between the interests of the child and the interests of the child's biological parents. In that sense, I support the marital presumption of paternity established when the child is born within the prescribed period after the death of the male spouse, but not after a divorce or an annulment of marriage, precisely because of the presumed different nature of marital relations prior to the termination of marriage. I also believe that it is in the best interest of the child to know the truth about his/her origin and that, for this reason, but also for the purpose of protecting the biological father's interests, the conditions for contesting marital paternity should be set without specific restrictions. In the end, I am of the opinion that subjective and objective time limits by which entitled persons can challenge marital paternity presumption in court, and especially the unlimited right of the child to take such action, contribute to the same goal.

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RAĐANJE ZATVORA – EVOLUCIJA IDEJE

Sažetak: Ne postoji društvo bez normi, kao što ne postoje norme koje se ne krše. Reakcija društva na kršenje osnovnih normi na kojima ono samo počiva u velikoj meri zavisi od epohe, odnosno od vrednosnog jezgra na kome je društvo utemeljeno. Zatvaranje postoji oduvek, ali se kroz istoriju drastično menjalo. Od zatvaranja bez svrhe i smisla, uz muke i patnju, do savremenih oblika lišenja slobode i savremenih zatvora. Sa idejnom revolucijom, menja se i vrednosna osnova društva, a samim tim i sve one norme koje iz takvih vrednosti proističu. Percepcija kazni i očekivanja od njih menjaju se, te se od XVIII i XIX veka razvija nova koncepcija zatvora kao ustanove kontrole, popravljanja, odnosno resocijalizacije. Zatvor postepeno prestaje da bude pakao na zemlji i postaje instrument uticaja društva na one koji se drznu da društvene norme krše. Ovaj rad prati tu evoluciju, to jest razvoj zatvora i ideje zatvaranja, od rupa i laguma, do savremenih kazneno-popravnih zavoda.

Ključne reči: kazna lišenja slobode, kazneno izvršno pravo, penologija, lišenje slobode, krivične sankcije.

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1. UVOD

Od kada postoji društvo kao organizovana zajednica ljudi koja zajednički obavlja određene poslove, postoje i norme koje takav zajednički život omogućavaju ili, u najmanju ruku, olakšavaju. Takvim osnovnim normama društvo teži da obezbedi zaštitu. Primarni način podrazumeva da kroz proces socijalizacije pojedinci prihvate društvena pravila kao ispravna i korisna, te da se dobrovoljno ponašaju u skladu sa njima. Pojedinac postaje član društva koje ima svoju kulturu, svoja pravila, svoje vrednosti i ideje koje se na njega prenose upravo kroz proces socijalizacije (Avramović & Stanimirović, 2016). „Pounutrašnjenje zahteva konkretne društvene zajednice je glavni cilj socijalizacije" (Marjanović & Markov, 2011, str. 224). Takav proces je neizmerno složen, a njegovi ishodi su sve osim izvesni. Jedna od glavnih posledica neuspele socijalizacije predstavlja upravo nepoštovanje društvenih normi, kroz razne oblike i obrasce ponašanja koji bivaju okarakterisani kao devijantni (Bošković, 2012). Za takva ponašanja svako društvo propisuje odgovarajuće sankcije, s tim da što je norma za društvo važnija, odnosno što je vrednost koja se štiti značajnija, to će i sankcija biti stroža (Radoman, 2016).

Osnovni predmet ovog rada jeste analiza razvoja jednog specifičnog načina reagovanja društva na navedene pojave. Konkretnije rečeno – sama ideja zatvora i zatvaranja. Kazna lišenja slobode u svojoj savremenoj i masovno zastupljenoj formi nastaje relativno kasno, tek krajem XVIII i početkom XIX veka. Međutim, zatvaranje pojedinaca na kraće ili duže vreme, samostalno ili uz neke druge mere, postoji od početka ljudske istorije. Ideja zatvaranja nije nova, ali je put od tamničenja i okova do resocijalizacije kao savremenog cilja kazne zatvora, veoma složen. Paralelo sa ovim procesom tekla je i promena svesti o svrsi i suštini koju kazna treba da ostvaruje (Lakobrija, 2020).

Pretpostavka od koje ovaj rad polazi jeste ta da je nastanak zatvora kao ustanove neodvojivo skopčan sa prodiranjem pozitivizma u nauku i filozofiju, kao i sa snaženjem prirodnopravnih teorija uopšte. Kakav je značaj sa jedne strane retributivizma, a sa druge ideja racionalizma i utilitarizma u kaznenoj politici za nastanak kazne zatvora? Ovo su pitanja na koja će ovaj rad pokušati da odgovori.

2. NASTANAK ZATVORA

Zatvor i kazna lišenja slobode u savremenom smislu te reči ulaze u penološku praksu pre oko dvesta godina. To, naravno, ne znači da u prethodnom vremenu nije bilo raznih oblika zatvaranja lica koja su kršila društvene norme, samostalno ili u kombinaciji sa nekim drugim merama.

2.1. Zatvaranje pre zatvora

Zatvori, u savremenom smislu te reči, javljaju se relativno skoro. Zatvor kao ustanova uticaja koja treba da ostvari ciljeve odvajanja, raspoređivanja, vezivanja jedinki za određeno mesto, njihovog iskorišćavanja kao i nadzora i kontrole, nastala je znatno pre pojave kazne lišenja slobode kao osnovne kazne (Fuko, 1997, str. 223).

Prvi izvori koji nam govore o zatvaranju datiraju iz 2050–1786 p. n. e. iz Egipta (Stevanović, 2012). O raznim oblicima zatvaranja može biti reči i u ostalim državama starog veka poput: Vavilona, Persije, Grčke, Izraela, Rima, ali i Kine i Indije (Nikolić & Kron, 2011).

Između starog i srednjeg veka ne postoje suštinske razlike kada je zatvaranje u pitanju. U oba slučaja ono po pravilu nije predstavljalo samu kaznu, već meru koja treba da obezbedi zadržavanje lica, odnosno njegovo čuvanje ili eventualno „korekciju" (Bosworth, J. [ed.] 2005). Takvo zatvaranje imalo je za cilj da spreči beg lica dok se nad njim ne izvrši smrtna ili neka druga kazna, dok ne vrati dug ili dok se ne odluči o njegovoj sudbini. Jednom rečju, bilo je potrebno da se obezbedi dostupnost tela kao osnovnog objekta kazne. U Srbiji je zatvaranje, kao mera za obezbeđivanje prisustva lica radi izvršavanja telesne kazne (a koja je izvršavana u obrocima, svaki dan pomalo), opstalo sve do XIX veka.

Ovakva zatvaranja su vršena po raznim mestima koja su za to bila pogodna, odnosno dostupna: lagumima, rupama, bunarima, pećinama, tamnicama, starim zamkovima, manastirima i ostalim ograđenim prostorijama koje onemogućavaju bekstvo. Kvalitet prostora, u smislu njegove pogodnosti za zdrav i human boravak, nije bio od značaja.

U periodu od XV do XVII veka dolazi do prvih značajnijih (ali ne i suštinskih) promena u praksi zatvaranja (Nikolić & Kron, 2011).

Kao posledica razvoja gradova i migracija sa sela, dolazi do pojave velikog broja skitnica, prosjaka, besposličara, vagabunda i sličnih lica koja predstavljaju opasnost po uspostavljeni red i poredak. Za razliku od Henrija VIII, koji je ovaj problem pokušao da reši tako što je naredio da se obesi 72.000 vagabunda (Radoman, 2016, str. 34), njegov naslednik Edvard VI donirao je Brajdvel, palatu svoga oca, u svrhu „čuvanja i popravljanja" moralno hendikepiranih osoba (Roth, 2006, str. 44). Na taj način (1553. godine) dolazi do nastanka prvog zatvora, iako još ne u savremenom smislu te reči. U narednim decenijama i vekovima, „brajdvelski zavodi" se šire po celoj Engleskoj. Međutim, ovde nije bilo reči o ustanovama u kojima je izvršavana kazna zatvora, to jest u koja su slata lica koja su izvršila teža krivična dela. U ovakvim zavodima (popravnim domovima, popravilištima, radionicama) čuvane su skitnice, prosjaci i sitni kriminalci koji nisu imali sredstava za život. Da bi bili sprečeni u krađi i ostalim sitnim zlodelima, zatvarani su u ovakve ustanove gde su bili primoravani na rad kako bi na taj način sami sebe izdržavali. Kao što se može videti, ovakvi zavodi više liče na kampove sa prinudnim radom, a manje na zatvore u savremenom smislu te reči. Ideja ovakvih zavoda širila se i u kontinentalnoj Evropi, gde je izrodila niz sličnih ustanova. Za ostala lica, zatvaranje je ostalo nepromenjeno – tamničenje u neuslovnim prostorijama, ali u već navedenom smislu pogodnim.

U narednim vekovima dolazi do pojave zatvora u smislu za potrebe zatvaranja izgrađenih ili prilagođenih objekata (Nikolić & Kron, 2011): Amsterdam (1659), Libek, Bern i Dancig (1697), Hamburg (sredina XVIII veka). Valja napomenuti i Zavod Svetog Mihajla u Rimu (1703), popravni dom u Milanu (1759) i popravni dom u Holandiji (1775) koji su bili predviđeni za „čuvanje i vaspitavanje" omladine sklone delinkventnom ponašanju i kriminalu. Prvi zatvor u Severnoj Americi datira iz 1773. godine (Burlingame, 2012, str. 9).

2.1.1. Uslovi u predmodernim ustanovama zatvaranja

Ukoliko je nesporno da su uslovi boravka u velikom broju savremenih zatvora XXI veka nehumani, a po zatvorenika štetni, može se postaviti pitanje kakvi su uslovi boravka postojali u trenutku nastanka ovih ustanova.

Najkompletniji pregled stanja u evropskim zatvorima s kraja XVIII veka daje nam Džon Hauard u svom radu „Stanje u zatvorima" (Hauard, 2015), čije prvo izdanje datira iz 1777. godine. Kao što je već rečeno, kazna zatvora kao takva nije postojala, a zatvaranje je primenjivano gotovo isključivo na dužnike, prosjake, besposličare, beskućnike i slična lica, dok su za teža kažnjiva dela, smrtna i telesna kazna (uz kaznu deportacije/transportovanja koja je postojala u kolonijalnim silama zapadne i severne Evrope) i dalje bile osnovne. Tako od 4084 zatvorenika u Engleskoj 1776. godine u kategoriju dužnika spada čak 2437 ili skoro 60% ukupne zatvorske populacije u zemlji (Hauard, 2015).

Ustanove zatvaranja ovog perioda bile su relativno male u poređenju sa današnjim. Najveći zatvori onog vremena, poput zatvora u Napulju, Veneciji, na prostoru današnje Holandije, u Portugalu ili Španiji, nisu brojali više od 500 do 1000 zatvorenika (Hauard, 2015), za razliku od savremenih zatvora za koje nije retko da čuvaju po više hiljada, pa i desetine hiljada lica (npr. zatvor u Los Anđelesu). Ono što je još specifično jeste odsustvo bilo kakve centralizacije i organizacije ovih ustanova. Dok su neke bile pod kontrolom države, druge su osnivali gradovi, okruzi, šire ili uže zajednice shodno sopstvenim potrebama i mogućnostima, kao i kaznenoj politici i filozofiji.

Stanje u ustanovama zatvaranja s kraja XVIII veka može se opisati samo kao katastrofalno. To su mesta na kojima su: „u istom jadu, hladnoći, gladi preživljavali i umirali nevini i krivci, muškarci i devojčice, žene i dečaci" (Haurad, 2015, str. 7). Oni koje je zadesila nesreća da završe u ovakvim ustanovama često su imali goru sudbinu od roba. Robovlasniku je u interesu da svoju imovinu čuva kako bi je što duže iskorišćavao. Zatvorenik nije bio potreban nikome, njega niko nije štitio, o njemu niko nije brinuo. Jedina pažnja koja je ka njemu bila usmerena jeste pažnja drugih zatvorenika i tamničara koji su u njemu videli izvor profita, zabave ili i jednog i drugog.

Ljudi koji su ulazili u ustanove zatvaranja kao zdravi i snažni, ako su uopšte uspevali da ustanovu napuste, izlazili su bolesni, oronuli i propali. Bivši zatvorenici su postajali prosjaci i beskućnici, često sakate i moralno posrnule osobe (ukoliko sve to već nisu i bili), koje kao takve nisu mogle da pronađu svoje mesto u „poštenom" društvu, te su povratak u zatvor ili pak teže kazne bili izvesni.

U mnogim slučajevima su štale i obori za svinje održavani bolje nego zatvori. Od stoke seljak ima koristi, dok od zatvorenika koristi nema niko, osim eventualno čuvara i drugih zatvorenika. U ovakvim od boga zaboravljenim mestima, boravilo je i po 10–12 ljudi, na 10 kvadratnih metara po 24 časa dnevno. Bez prozora, svežeg vazduha, u totalnom ili polu mraku, bez tekuće ili bilo kakve druge vode, bez toaleta, a često i bez elementarne odeće, obuće, kreveta ili bilo kakvog drugog nameštaja. Kada govorimo o toaletu, mislimo na bilo kakve pogodne prostorije za vršenje nužde, poljski toalet ili bilo kakvu drugu mogućnost obavljanja nužde van same prostorije u kojima zatvorenici borave.

U ovakvim uslovima zaraza je vladala. Džon Hauard, koji je tokom svog života prešao skoro 70.000 km prilikom obilaženja zatvora u Evropi, beleži da nije nimalo retka pojava da čuvari nevoljno odlaze u pojedine delove zatvora, kako zbog nesnosnog smrada, tako i zbog straha od bolesti. Čak se i on sam prilikom obilaska jednog takvog dela zatvora teško razboleo, uprkos brojnim merama predostrožnosti i prevencije (npr. prao je odeću odmah po izlasku iz zatvora, dok je preko nosa držao maramicu natopljenu sirćetom, kako zbog smrada tako i zbog bolesti, uz izbegavanje bilo kakvog fizičkog kontakta.).

U nekim zatvorima, kao i u pojedinim popravnim domovima (brajdvelskim zavodima), situacija je bila nešto bolja. S obzirom da je ovde često bilo reči o dužnicima i sitnim lopovima, njih nije bilo potrebno zatvarati u tamnice i slične prostorije. Međutim, i ovde su uslovi bili katastrofalni. Ove ustanove su bile pretrpane. Na istom mestu su se nalazili i mladi i stari, i muškarci i žene, deca i povratnici, primarni prekršioci, ali i ludaci. Hrana i piće im često nisu bili dostupni besplatno, već se od njih očekivalo da ih od čuvara kupe. A do nešto malo novca moglo se doći samo kroz težak rad, često u okovima. U ovakvim ustanovama kocka i alkohol nisu bili retki, po pravilu u režiji čuvara. Neredi, svađe, tuče, maltretiranja, iznude nisu predstavljali retkost, dok čuvari nisu imali poseban interes niti obavezu da se o redu i disciplini posebno brinu.

Čuvari često nisu dobijali platu, već su zarađivali od tzv. honorara. Mesto čuvara je često bilo prodavano ili iznajmljivano od države, da bi onda čuvari, iskorišćavajući zatvorenike, vraćali ono što su na njihovo „čuvanje“ potrošili. Suštinski, jedina obaveza koju su čuvari imali

jeste ta da spreče bekstvo. Od zatvorenika su naplaćivali štošta – od toga da se prilikom samog ulaska od njega traži da plati određenu taksu, do toga da se naplaćuju boravak, hrana, voda, slamarica za spavanje (ako je uopšte ima), troškovi prevoza na suđenje, troškovi žalbi, konsultovanje sa lekarom/apotekarom (ako neka vrsta zdravstvene zaštite uopšte postoji), cena poseta, iznajmljivanje odeće, nameštaja, ali i jednokratna taksa za izlazak iz zatvora. Ako na sve ovo dodamo i dug zbog kojeg je neko i završio u zatvoru (dužnički zatvor), kao i kamatu, ta cifra može znatno da poraste. Ukoliko zatvorenik nema sopstvenih sredstava da plati sve navedene troškove, dug i kamatu, niti to može da učini neko u njegovo ime, jedino što mu ostaje jeste da teškim radom u okviru ustanove zaradi dovoljno kako bi sve to pokrio. I kada kaznu izdrži ili ako se utvrdi da je nevin, te da je tu bez osnova, iz zatvora neće izaći sve dok ne podmiri troškove svog boravka u njemu. Sve to dodatno komplikuju prodaja alkohola i kockanje koji su u zatvoru bili uobičajeni, pa i dozvoljeni. Stanje u zatvorima ovog perioda odstupa, u svakom smislu, drastično od zatvora kako ih mi shvatamo danas u XXI veku (više o tome: Rusche, Kirchheimer, 1994).

Na sve ovo treba dodati i to da se na suđenja često čekalo mesecima, a negde čak i celu godinu. Čak i ukoliko bi optuženik bio oslobođen, vreme koje bi proveo u ovakvoj ustanovi i sva ona fizička, duhovna, ali i materijalna šteta ostali bi nenadoknađeni.

Opisano stanje nije bilo svuda isto. Postojale su razlike kako od države do države, tako i od zatvora do zatvora u istom gradu. Pravilnost koja se može uočiti jeste da je u velikim silama onovremene Evrope, poput Engleske, Francuske, nemačkih država ili Rusije, stanje znatno gore nego u manjim (ali veoma bogatim) državama poput Holandije, Belgije, Lihtenštajna ili Švajcarske. Ali razlike, iako su postojale, nisu bile suštinske. U zatvor se lako ulazilo, iz njega se teško izlazilo. Zdravstvena i svaka štetnost boravka u ustanovi zatvaranja bila je notorna.

Navedeno stanje predstavlja doslednu i isključivu primenu principa retributivizma u praksi. Društvo ne interesuju posledice kažnjavanja. Država je tu da održi red i poredak, da propiše pravila i da kako zna i ume obezbedi njihovo poštovanje. Grubost i krajnje odsustvo humanosti predstavljaju i dalje dominantan princip. U ovo vreme ideje pozitivne prevencije, svrsishodnosti i humanosti u kažnjavanju apso-

lutno nisu bile u znatnijoj meri zastupljene. I vlast i „pošteni" građani gledali su na zatvorenike (i delinkvente generalno) kao na neku vrstu taloga društva. Takvi ljudi nisu ni zasluživali bolje. Shvatanje da svaki čovek ima svoju ciglu u zatvoru i da svako tamo može da završi, jer život je sve samo nije predvidiv, te da u zatvor idu ljudi, a ne čudovišta, koji zaslužuju tretman dostojan čoveka, nije bilo rašireno (a nije ni danas u XXI veku).

Može se reći da penitensijarna praksa predstavlja samo odraz vrednosti i shvatanja određenog društva. Dok se odnos prema suštini kazne, čoveku i njegovoj dobrobiti, pravdi i slobodi nije promenio, ni kazna zatvora nije mogla da evoluira (Radoman, 2016). To je takođe vreme velikih društvenih promena (Francuska buržoaska revolucija i Američki rat za nezavisnost), promena u filozofiji (uticaj epohe prosvetiteljstva), tektonskih promena u nauci (pojava pozitivizma) pa i pravu (nagli razvoj prirodnopravnih strujanja i ideja o neotuđivim pravima čoveka). Sa navedenim promenama dolazi i do reforme zatvaranja i njegovog prevođenja u kaznu lišenja slobode u savremenom smislu te reči, kao i do pojave savremenih zatvora.

U narednom poglavlju prvo će biti obrađena osnovna teorijska i filozofska shvatanja koja su udarila pečat velikoj reformi, ili je možda bolje reći rađanju zatvora, bez kojih se sama evolucija ideje zatvaranja ne može pravilno razumeti.

2.2. Idejna revolucija

Nastanak kazne zatvora ne može se posmatrati izolovano od velikih promena u nauci i filozofiji onog vremena. Ono što je opšti pečat ovog razdoblja jeste raskid sa verskim misticizmom, konzervativizmom i fundamentalizmom uz sveopšte jačanje racionalizma kao dominirajućeg i podrazumevanog principa u nauci sve do danas.

Teoretičari, ali i društvo u celini, problematici kriminaliteta i njegovog suzbijanja počinju da pristupaju na jedan suštinski drugačiji način. Kažnjavanje se više ne posmatra isključivo kao okajanje greha, zadovoljenje božje pravde, izražavanje pravednosti ili kao odbrana suverenovog veličanstva, već kao praksa koja treba da bude korisna, to jest praktična (Konstantiović-Vilić, Ristanović-Nikolić, & Kostić, 2010).

2.2.1. Revolucija opštih ideja

U razdoblju od XVI do XVIII veka, zajedno sa razvojem prirodnopravnih teorija prava, razvijaju se mnogobrojne teorije društvenog ugovora. Ono što je svima njima zajedničko jeste upravo jačanje racionalizma u shvatanjima društva i države. Država i sve njene ustanove ne objašnjavaju se više pomoću verskih i teorija baziranih na tradiciji, već se njima sve više pristupa objektivno, a često i vrednosno neutralno. Suština novih shvatanja jeste u tome da država nastaje na osnovu sporazuma, direktnog ili prećutnog, članova društva. Ona predstavlja kvalitativno drugačiju zajednicu, koja kao takva može da obezbedi sigurnost i prosperitet na znatno višem nivou od preddržavnih formacija. Radi ostvarenja tog cilja, na državu se prenose određena ovlašćenja, odnosno njeni pripadnici se odriču dela svojih prava. Državljani – građani – članovi nešto dobijaju, a nešto gube. Cena reda i sigurnosti poretka jeste odsustvo potpune slobode, odnosno obaveza ponašanja na određen način. Nepoštovanje te obaveze povlači sankcije.

Ovo je, naravno, uprošćeno predstavljanje teorija društvenog ugovora i ono je načinjeno kako bi se uvidela kvalitativna promena percepcije društva i države. Oni se više ne posmatraju kao bogom dane tvorevine kojima upravljaju savršeni i blagosloveni vladari koje je odredilo proviđenje i kojima svi duguju bezrezervnu poslušnost. Država više nije mistična tvorevina, već ustanova koju su stvorili ljudi zarad ostvarivanja određenih ciljeva, zbog opstanka, ali i napretka. Država nema svoja večna prava, već njeni pripadnici – građani. Oni imaju prava i slobode kojih se odriču delimično i sa određenim ciljem, a sve kako bi jedna takva zajednička tvorevina mogla da funkcioniše. Ovo je takođe i vreme opšteg smanjenja sklonosti ka nasilju (samim tim i surovim telesnim kaznama), vreme kada dolazi do svojevrsne pacifikacije običaja i svakodnevice (Mišambled, 2015).

Formira se novo merilo ocene sveukupne stvarnosti, pa samim tim i svih pojava u njoj, a to je upravo korisnost, tj. svrsishodnost. Ovo je očekivano jer je upravo ovo period prosvetiteljstva na koji se nastavlja epoha pozitivizma u nauci (fra. *positivism*, ono što proizlazi iz iskustva, lat. *positīvus* ono što jeste, što postoji, pozitivno pravo – važeće pravo, nasuprot istorijskom ili prirodnom pravu). Društvene i prirodne po-

jave posmatraju se empirijski, egzaktno. Teži se utvrđivanju objektivnih uslova neke pojave i faktora njene dinamike, a sve to kako bi se one mogle usmeravati ili suzbijati.
Sve će ovo dovesti do brojnih promena u evropskim društvima i, u krajnjoj meri, do nastanka industrijskih država zasnovanih na principima racionalnosti uz garantovanje privatne svojine i postepenu sekularizaciju sveopšteg društvenog života.

2.2.2. Klasična škola prava

Isti pristup se javlja i u krivičnom pravu. Pripadnici klasične škole prava započinju prvo ozbiljno, sistemsko proučavanje načina i postupaka sprečavanja i suzbijanja kriminala (Jovašević & Kostić, 2012). Teoretičari ove škole prvi put na jedan pravnički, formalno ispravan način definišu niz opštih pravnih pojmova u krivičnom pravu. Sve navedeno, zajedno sa novopostavljenim zahtevima u ovoj oblasti (pre svega zahtev za doslednim načelom zakonitosti), dovodi do rađanja novog pristupa kaznama i kažnjavanju i do formiranja kazne lišenja slobode u savremenom smislu te reči. U isto vreme, dolazi i do pojave penologije kao nauke o kaznama i kriminologije kao nauke o kriminalitetu.

S obzirom na temu ovoga rada, na ovom mestu neće detaljno biti obrađena shvatanja i principi ove škole. Biće reči samo o osnovnim idejama koje je formulisao još Čezare Bekarija 1763. godine u svom čuvenom traktatu „O zločinima i kaznama“ (Bekarija, 1984). Ove ideje izvršiće ogroman uticaj na nauku i praksu krivičnog prava u celini.

Bekarijine ideje mogu se prikazati kroz tri osnovna zahteva (Pradel, 2008):

1. Strogi legalitet u krivičnom pravu,
2. Svođenje broja inkriminacija na razumnu meru,
3. Utilitarnost kazni.

Zahtev za uvođenjem danas nespornog strogog legaliteta u krivično pravo potiče upravo od Bekarije. On je prvi koji je definisao jedno potpuno načelo zakonitosti u ovoj oblasti prava. Ono se ne odnosi samo na pitanje krivičnih dela i kazni (lat. *nullum crimen sine lege, nulla poena sine lege*), već i na procedure otkrivanja i presuđivanja za krivična dela, kao i na izvršenje izrečenih kazni. Načelo zakonitosti zahvata ne samo krivično materijalno pravo već i krivično procesno i kazneno izvršno. Rađa se ideja da se ovlašćenja sudija, tužilaca, policajaca i islednika, kao i čuvara u zatvorima moraju unapred precizno i jasno definisati. Bekarija je u ovom zahtevu išao toliko daleko da se zalagao za apsolutno određene kazne, gde bi sudija bio samo automat za mehaničku primenu prava. Bez mogućnosti za tumačenje i kreativnost, ne može biti ni zloupotreba. Uvidevši svu arbitrarnost i zloupotrebu do kojih je dolazilo u njegovo vreme, smatrao je da samo potpunim isključivanjem slobodnog delovanja navedenih subjekata teško stanje može biti prevaziđeno.

Drugi zahtev na neki način predstavlja most ili spregu između prvog i trećeg. Ukoliko postoji bezbroj pravila, ukoliko su rasuta po različitim ne toliko dostupnim zakonicima, uredbama, naredbama, odlukama i drugim pisanim ili nepisanim aktima, kako se od običnih građana (u ono vreme izvesno nepismenih i u potpunosti neobrazovanih) može očekivati da ih saznaju i poštuju? Kada se zapovest ne može saznati, kako se ona može poštovati? Ako se nije ni moglo očekivati da neko pravilo može da se ispoštuje jer nije ni poznato, koje je opravdanje kažnjavanja njegovog kršenja? Kako bi zabrane mogle da budu efikasne i svrsishodne, moraju biti dostupne, a samim tim i umerene u broju.

Treći zahtev je za nas najznačajniji. Bekarija predstavlja autora koji zahteva jedan odsečan prelazak sa filozofije retributivizma na ideje konsekvencijalizma u kaznenom pravu uopšte. Kazna, po njegovom mišljenju, mora nečemu da služi. I to ne nekom apstraktnom, dalekom cilju, već praktičnom i ovozemaljskom. „Kazne imaju za cilj samo da spreče krivca da i dalje šteti društvu i da odvrate druge od vršenja zločina“ (Pradel, 2008, str. 27). Negativna specijalna i generalna prevencija treba da budu ishodište i utoka kažnjavanja i kazni, njihovo jedino opravdanje i kriterijum procene. Iz navedenog zahteva proizlazi niz drugih koji će u svojoj krajnosti upravo dovesti do pojave savremenih zatvora.

Sve kazne kojima je primaran cilj da nanesu bol, da izazovu patnju, muke, sablazan, gađenje ili neku sličnu muku, apsolutno su beskorisne i štetne. Bekarija je načelno protiv smrtne kazne i telesnog kažnjavanja, dok se zalaže za pojačanu primenu novčane kazne, kazne prinudnog rada i kazne zatvora. Samo te kazne mogu da ostvare navedeni cilj. Mučenja, sakaćenja i slična zlostavljanja ne služe ničemu osim uništenju čoveka, a to se nije pokazalo kao put kojim se navedeni cilj može ostvariti.

Bekarija još zahteva i uvođenje jednakosti u kažnjavanju. Kazna mora biti jednaka za sve, kako za bogate, tako i za siromašne, za moćne podjednako kao i za slabe. Ovaj princip dugo neće biti u potpunosti prihvaćen, ali i danas kada formalno jeste ispoštovan, u praksi ne daje uvek jednake rezultate. Različit tretman onih koji to ne zaslužuju (protekcija i nepotizam), nije redak. Sa druge strane, ukoliko je za neko ponašanje predviđena ili se primarno primenjuje novčana kazna, dok sprečavanje lica u vršenju krivičnih dela ne postoji ili je neefikasno, tada je takvo ponašanje zabranjeno pre svega siromašnima.

Poslednje što ćemo ovde još pomenuti jeste shvatanje da je izvesnost primene kazne nemerljivo efikasnije po prevenciju od brutalnosti njenog izvršenja. Rečeno savremenom pravnom terminologijom: izvesnost primene pravne norme znatno intenzivnije utiče na potencijalne učinioce krivičnih dela u smislu odvraćanja (prevencije) od visine zaprećene kazne. Da je obratno tačno, u starom i srednjem veku ne bi ni bilo kriminala s obzirom da se za krađu sekla ruka, za uvredu sekao nos, dok se za napad na lik veličanstva nabijalo na kolac, mučilo i teško sakatilo. Fuko u svom delu „Nadzirati i kažnjavati" opisuje veoma detaljno sve muke kroz koje prolazi Damjen kao neuspešni atentator na francuskog kralja Luja XV. Ritual mučenja, čerečenja, sečenja delova tela, zasecanja, pa onda brige o ranama kako ne bi došlo do prerane smrti, čupanja kože, vađenja očiju i čupanja udova, izvršen je javno u velikom ceremonijalu pred velikim brojem okupljenih građana. Opisan proces je trajao više dana.

Svi navedeni zahtevi uticaće na brojne teoretičare, filozofe, ali i praktičare, kako pravne tako i drugih orijentacija, da postepeno reformišu celokupno krivično pravo, što će dovesti i do nastanka savremenih zatvora.

Najvažniji predstavnik nove orijentacije kada govorimo o kaznama i kažnjavanju, konkretno reformi ustanova zatvaranja, jeste engleski filozof i teoretičar Džeremi Bentam (1748–1832). Kao savremenik Kanta, Hauarda, Bekarije i mnogih drugih velikana ovog prelomnog vremena, on je bio neposredno upućen kako u sve probleme onovremenog društva, tako i u nova strujanja i nove ideje koje je u velikoj meri i oblikovao.

2.2.3. Panoptikon

Potpuno novi pristup lišenju slobode kao obliku kažnjavanja Bentam je izneo u svom delu „Panoptikon" (1787). Iako ideja panoptikona nikada nije primenjena u svom čistom obliku, Bentamovo shvatanje izgleda i funkcije zatvora izvršiće ogroman uticaj kako na teoretičare, tako i da nosioce javnih vlasti tokom narednog veka.

Bentam je težio da osmisli takvu ustanovu lišenja slobode koja će dovesti do eliminisanja korupcije, proizvoljnosti, zavera, epidemija i bolesti (Bentam, 2014). Interesantan je navod Bentama da je Prva engleska flota tokom Američkog rata za nezavisnost izgubila preko 2000 ljudi od bolesti, do koje je došlo usled kontakta sa otpuštenim zatvorenikom iz jednog londonskog zatvora. Više ljudi je odnela bolest od pomorskih bitki i samog rata na moru.

Kako bi to postigao, on je osmislio niz arhitektonskih i drugih rešenja na kojima zatvor treba da počiva. Polazna osnova svega jeste ideja konstantnog, sveprisutnog, svevidećeg nadzora.

Zatvor treba da bude kružnog oblika. Zgrada ne sme da bude previše velika. Njen obim bi trebalo da bude približno 30 metara. Sa dva sprata i ćelijama od oko 4,5 m^2 (oko 2,5m x 1,8m) raspoređenih ukrug. Ovako zamišljen zatvor mogao bi da čuva oko 96 zatvorenika. Ukoliko bi se povećao broj spratova, u jednoj ustanovi moglo bi da boravi i do približno 300 štićenika. Zgrada bi trebalo da ima oblik svojevrsnog kruga sa praznim centrom. Dok bi po obodu zgrade bile ćelije, u sredini bi stojao nadzorni toranj, a između njih prazan prostor.

Bentam je smatrao da ovakav dizajn može da se primeni, pored zatvora, i na ludnice, bolnice, ali i škole i fabrike, to jest na sva ona mesta kod kojih postoji potreba za konstantnim nadzorom i kontrolom. Iz

ovih zamisli, s vremenom će se pod uticajem Fukoa razviti ideja panopticizma kao novog mehanizma sveopšte kontrole i nadzora savremene države nad njenim građanima.

Svaki zatvorenik bi imao sopstvenu ćeliju. Ona bi bila tako postavljena da je od susednih ćelija odvojena bočnim zidovima. To bi sprečilo komunikaciju između zatvorenika, a samim tim i kriminalnu infekciju, kao i dogovaranje i planiranje ne samo bega već i nereda. Na spoljašnjem zidu bi trebalo da stoji veliki prozor kroz koji bi u ćeliju, pored svežeg i čistog vazduha, ulazila i svetlost. Unutrašnji zid bi imao otvore sa rešetkama. Ovakav dizajn treba da omogući nadzorniku koji stoji u centralnoj kuli (koja je zamračena kako bi zatvorenicima bilo onemogućeno da vide da li je i kada je nadzornik prisutan i kada ih nadgleda), da sa lakoćom, samostalno i sa velikom sigurnošću može da kontroliše veliki broj zatvorenika. Svaki zatvorenik bi sam boravio u čistoj ćeliji, sa dovoljnom količinom vode, hrane, po mogućstvu i sa sopstvenim toaletom. Navedeno ne podrazumeva nikakav luksuz, već minimalne i dovoljne uslove koji su potrebni da ne bi došlo do narušavanja zdravlja zatvorenika. Život zatvorenika, u krajnjoj meri, koliko god bio „pristojan", ne sme biti bolji od života prosečnog čoveka na slobodi (Rusche & Kirchheimer, 1994). Sve ovo treba da eliminiše zaraze, bolesti, a samim tim i teške uslove i veliku smrtnost u zatvorima. Ali šta se svime ovim želi postići?

Panoptikon podrazumeva tehnologiju moći koja pomoću nadziranja i kontrole većine od strane manjine, uz pomoć discipline, treba da reši problem kriminaliteta. Nasilje, mučenje, bedni uslovi boravka i besmisleno nasilje nisu doneli društvu ništa dobro. Na mesto takvih ustanova, koje su predstavljale pakao na zemlji i rasadnike zaraze, dolaze ustanove apsolutne kontrole.

Svaki zatvorenik je u potpunosti nadziran i kontrolisan. Svaki njegov pokret, svaki njegov čin, vidljiv je. Nije potrebno primeniti nikakvu prinudu, ni silu, pa ni pretnju. Činjenica da zatvorenici znaju da su pod nadzorom svakog trenutka, odnosno da postoji realna mogućnost da budu nadzirani svake sekunde, dovoljan je mehanizam kontrole. Već je rečeno da je izvesnost drastično efikasniji princip od brutalnosti.

Na taj način je obezbeđeno efikasno čuvanje zatvorenika. Oni su pod nadzorom i ne mogu ni sebi ni drugima da naškode. Međutim,

to nije krajnji cilj, već samo početna faza. Totalna kontrola kroz stalni nadzor samo je nužan preduslov kako bi se preduzele naredne mere. Zatvor nije hotel u koji su zatvorenici poslati na odmor. Kada se uspostavi kontrola, prelazi se na rad. Zatvorenici su dužni da u okviru ustanove tokom celog dana rade. To ne smeju biti poslovi koji podrazumevaju faktičko mučenje ili besmislene poslove. To moraju biti aktivnosti koje donose profit ustanovi, a zatvoreniku, sa druge strane, omogućavaju da razvija ili formira svoje radne sposobnosti.

Iz ovakvog krajnje pojednostavljenog predstavljanja ideja Bentama i panoptikona može se uočiti nekoliko osnovnih zamisli koje su kao takve bile u potpunosti revolucionarne i koje će poslužiti kao ideje vodilje u reformama do kojih će doći u narednom veku:

1. Uslovi u zatvoru ne smeju da budu takvi da predstavljaju mučenje i faktičku smrtnu kaznu.

2. Ustanova mora biti tako organizovana da je moguć konstantan i potpun nadzor svih aktivnosti zatvorenika, 24 časa dnevno, sedam dana u nedelji.

3. Zatvorenici moraju da rade, kako iz razloga što će na taj način ustanova da se izdržava i da bude ekonomična, tako i da ne bi došlo do propadanja ličnost zatvorenika, a samim tim i onemogućavanja njihove reintegracije u društvo.

4. Zatvorenici moraju biti odvojeni jedni od drugih, kako radi sprečavanja kriminalne infekcije, tako i radi očuvanja reda u zatvoru.

Od takve kazne zatvora društvo ima korist ne samo zato što u njih zatvara kriminalce već i zato što te ustanove više nisu rasadnici bolesti, nemorala i kriminala. Korist po zatvorenike bila bi više nego očigledna. Ovakav zatvor omogućava uvođenje kazne lišenja slobode kao osnovne kazne koja treba da zameni telesne, ali i smrtne kazne koje će tokom XIX veka postepeno nestajati iz pravnih sistema evropskih država.

Nekoliko zatvora je izgrađeno pod neposrednim uticajem Bentamovog panoptikona (Bentam, 2014, str. 117) i to pre svega: Puni u

Indiji (1818), Milbenk u Londonu (1830), Rond haus zatvor u Australiji (1830), ali i mnogi drugi.

Glavni nedostatak ovakvog pristupa jeste što je zatvorenik posmatran kao objekat, kao pasivno lice na koje se primenjuju određene mere i koje ih usvaja po očekivanom automatizmu, odnosno na planiran način. Pokazaće se kao nesporno da zatvorenici nisu nimalo pasivni, štaviše da se veoma aktivno suprotstavljaju svim oblicima intervencije u zatvoru, što će za posledicu imati dalju promenu pristupa kazni lišenja slobode u XX i XXI veku.

2.3. Pojava savremenih zatvora

Razvoj u nauci i filozofiji, novi senzibiliteti, jačanje ideje o prirodnim i uopšte ljudskim pravima, svojevrsna opšta humanizacija, kao i jačanje ideja utilitarizma i racionalizma uopšte, dovešće u XIX veku do prvih velikih reformi u praksi izvršenja kazne lišenja slobode.

Prvi pravno regulisani sistem izvršenja kazne zatvora jeste ćelijski sistem, još nazvan pensilvanijski ili filadelfijski (Radoman, 2016), nastao u Sjedinjenim Američkim Državama početkom XIX veka. On je podrazumevao strogo odvajanje zatvorenika u ćelije bez ikakve mogućnost komunikacije sa drugim zatvorenicima. Potpuna osama kako bi se sprečila kriminalna infekcija, te kako bi zatvorenici bili sami sa sobom i svojim mislima, što treba da im pomogne da razumeju i prevaziđu svoje „grehe" zbog kojih su i završili u zatvoru.

Posle njega se na istorijskoj sceni javlja tzv. obernski sistem nastao takođe u SAD. I on je podrazumevao strogo osamljivanje zatvorenika, ali je ipak u određenoj meri dozvoljavao rad i makar vizuelnu komunikaciju sa drugim zatvorenicima.

Krajem XIX veka javlja se progresivni sistem zatvora. Prethodni sistemi i strogo osamljivanje zatvorenika, koje se pokazalo kako potpuno suprotno ljudskoj prirodi, zamenjeni su novim pristupom. Sistem progresivnog zatvora podrazumeva veru u samog zatvorenika. Kazna zatvora je podeljena na određene faze. Da bi zatvorenik izdržao svoju kaznu, potrebno je da prođe kroz sve faze. A on sam je mogao da doprinese kraćem trajanju pojedinih faza, to jest kraćoj kazni zatvora. Ukoliko se zatvorenik ponašao disciplinovao, ukoliko je valjano radio,

poštovao red u zatvoru, učio zanat, ispunjavao radnu ili neku drugu normu, odnosno ukoliko bi se u zatvoru valjano vladao, brže bi prelazio u narednu fazu. I tako sve do krajnje faze koja podrazumeva izlazak iz zatvora. Što se zatvorenik valjanije ponaša, to će mu kazna kraće trajati.

Sistem progresivnog zatvora (u svojim mnogobrojnim varijantama) ostao je glavni sistem izvršenja kazne zatvora do danas. Jedino što se na njega nadovezuje jeste naglašena ideja klasifikacije u savremenim penitensijarnim sistemima. Kako bi se ciljevi kazne ispunili, treba što doslednije sprovesti klasifikaciju osuđenika. Učinioci lakših krivičnih dela, kao i primarni učinioci, ne treba da izdržavaju kaznu zajedno za povratnicima i učiniocima težih krivičnih dela. Žene moraju biti odvojene od muškaraca, deca od odraslih, stariji od mlađih, bolesni od zdravih i tako dalje. Sam stepen klasifikacije zavisi pre svega od ekonomskih mogućnosti konkretnih društava.

Kazna lišenja slobode i ustanova zatvora u Srbiji nastaju relativno kasno (Mirković, 2013). Pre Prvog srpskog ustanka kazna lišenja slobode kao takva nije postojala. U vremenu ustaničke Srbije počela je da se javlja sporadično, pre svega kao sredstvo za obezbeđivanje prisustva radi izvršenja neke druge kazne ili mere. Tek od sredine XIX veka i ukidanja telesnih kazni, kao i od pojave prvih zatvora u pravom smislu te reči i usvajanja prvog srpskog krivičnog zakonika iz 1860. godine, može se pratiti razvoj penitensijarne prakse u Srbiji.

3. ZAKLJUČAK

Ukoliko je ideja kažnjavanja kao takva stara koliko i samo društvo, ona nije statična, to jest jednom data i nepromenljiva. Što su dominantne vrednosti i iz njih izvedene prakse različitije, to će i praksa kažnjavanja biti drugačija.

Celokupna istorija kažnjavanja može se grubo podeliti na dva velika perioda. Period privatne reakcije je kao takav duže trajao, budući da on podrazumeva period od pojave prvih preddržavnih formacija do nastanka prvih organizovanih država starog veka. Do smene nije došlo svuda i naprasno. Veliki broj ljudskih zajednica ostao je na plemenskom

nivou organizacije još dugo posle nastanka prvih država. Čak i danas znatan broj ljudske populacije i dalje živi u preddržavnim, plemenskim formacijama. Dok je za period privatne reakcije karakteristično odsustvo sistematičnosti, odnosno organizovanog kažnjavanja i veliki uticaj običaja, za period državne reakcije u znatnoj meri važi suprotno. Sa nastankom i jačanjem države, specijalizovani organi pod kontrolom vladara preuzimaju sve poluge normiranja i kažnjavanja ne više toliko zasnovanih na običajima, koliko na potrebama samog društva, ali i onih koji ga predstavljaju, odnosno koji njime rukovode.

Ni period državne reakcije nije jedinstven. U okviru njega može se uočiti više faza. To su, pre svega, faza zastrašivanja i ispaštanja kojoj, grubo rečeno, odgovara retributivistički pogled na kazne i kažnjavanje. I faza humanizacije i individualizacije koju prati promena svesti ka konsekvencijalizmu, konkretnije utilitarizmu i utilitarnoj kaznenoj praksi.

Dok su život čoveka i njegovo zdravlje bili nisko postavljeni na lestvici vrednosti, kaznena praksa nije mogla biti drugačija do surova. Tek sa velikim promenama u nauci i filozofiji, a shodno tome i širim društvenim tokovima s kraja XVIII i početka XIX veka, dolazi do razvoja jednog kvalitativno drugačijeg pojmljenja čoveka, države i njihovog međusobnog odnosa.

Sa jačanjem pozitivizma u nauci i filozofiji uopšte, dolazi do demistifikacije učinilaca krivičnih dela. Sve navedeno, zajedno sa novim zahtevima koji proizlaze iz francuske i američke revolucije, dovodi prvo do teorijskih, a zatim i do korenitih reformi same prakse kažnjavanja i pojave kazne lišenja slobode i zatvora u savremenom smislu te reči.

Velikim delom svoje istorije, kazneni sistem se nije mnogo i drastično menjao, dok je u poslednja dva veka doživeo suštinske promene do kojih je došlo usled potpuno promenjene percepcije o suštini i svrsi kazne.

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BIRTH OF PRISON – EVOLUTION OF THE IDEA

Abstract: A society without norms does not exist, just as norms that are not violated do not exist as well. The reaction of society to violation of basic norms on which it itself is based largely depends on the epoch, that is, on the value core on which the society itself is based. Imprisonment has always existed, but it has changed drastically throughout history – from imprisonment without purpose and meaning, alongside torment and suffering, to modern forms of deprivation of liberty and modern prisons. The ideological revolution has changed the value basis of society, thus changing all the norms that had arisen from such values. The perception and expectations of punishment have changed and, from the 18th and 19th centuries onwards, a new concept of prison as an institution of control, correction, or resocialization has been developing. Prison has ceased to be perceived as hell on earth and became an instrument of society's influence on those who dare to violate social norms. This paper follows this evolution, that is, the development of prisons and the idea of imprisonment from holes and dungeons to modern penitentiaries.

Key words: prison sentence, penal law, prisons, penology, incarceration, criminal penalties.

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THE BIRTH OF PRISONS– EVOLUTION OF AN IDEA

Abstract: A society without norms does not exist, just as norms that are not violated do not exist. The reaction of society to violation of basic norms on which it itself is based largely depends on the epoch, that is, on the value core on which the society itself is based. Imprisonment has always existed, but it has changed drastically throughout history—from imprisonment without purpose and meaning, alongside torment and suffering, to modern forms of deprivation of liberty and modern prisons. The ideological revolution has changed the value basis of society, thus changing all the norms that had arisen from such values. The perception and expectations of punishment have changed and, from the 18th and 19th centuries onwards, a new concept of prison as an institution of control, correction, i.e. re- socialization has been developing. Prison has ceased to be seen as hell on earth and became an instrument of society's influence on those who dare to violate social norms. This paper follows this evolution, that is, the development of prisons and the idea of imprisonment from holes and lagoons to modern penitentiaries.

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1. INTRODUCTION

Ever since the emergence of society as an organized community of people that perform duties together, there have been norms that made such cohabitation possible or at least easier. These norms are the way to assure that the society is protected. The main method to achieve this is the process of socialization through which the individuals will accept social norms as correct and useful, and therefore willingly obey them. Thus individuals become members of a society that has its own culture, norms, values as well as ideas, all of which are transferred onto them through the process of socialization (Avramović & Stanimirović, 2016). "Internalization of society's specific demands is the principal goal of socialization" (Marjanović & Markov, 2011, p. 224). Such a process is immensely complex and its outcomes are anything but certain. One of the main consequences of unsuccessful socialization is non-compliance with social norms through various forms and patterns of behavior characterized as deviant. (Bošković, 2012). For such behaviour every society prescribes adequate sanctions; the more important the norm for the society, or, in other words, the more significant the value being protected, the stricter the sanction will be (Radoman, 2016).

The objective of this paper is to analyze the evolution of a particular way the society reacts to non-compliance of social norms: that is, the concept of prison or imprisonment. Imprisonment, in its contemporary and widely accepted form, appears relatively late, in the late eighteenth and early nineteenth century. However, the imprisonment of individuals for a shorter or longer time, as a sole punishment or together with other measures, has existed ever since the dawn of human history. The idea of imprisonment is not novel, but the road from dungeons and shackles to resocialization as a modern objective of a prison sentence has been long and complicated. Simultaneously, the understanding and awareness of the purpose of imprisonment as a form of punishment have been undergoing major changes as well (Lakobrija, 2020).

This paper starts from a hypothesis that the origins of prison as an institution are inseparably linked with the permeation of positivism into science and philosophy, as well as with the emerging natural law theories in general. How did the concept of retributive justice, on

the one hand, and the ideas of rationalism and utilitarianism in penal policy, on the other hand, contribute to the emergence of incarceration as a form of punishment? These are the questions that this paper will attempt to answer.

2. ORIGINS OF PRISON

Prison and imprisonment, in the contemporary sense, entered the penological practice around two hundred years ago. Naturally, different forms of imprisonment (as a sole form of punishment or accompanied by other measures) for individuals who violated social norms, existed long before that.

2.1. DETENTION BEFORE IMPRISONMENT

Prisons, in the contemporary sense of the word, have emerged quite recently. Prison as an institution is meant to accomplish the following objectives: separation, dispersal and confinement of individuals to a specified place, their exploitation, surveillance and control. However, these objectives, as well as the restraint of a person's freedom as a form of punishment, began long before incarceration (Foucault, 1997, p. 223).

The first sources on imprisonment date back to ancient Egypt, from 2.050 to 1.786 BCE (Stefanović, 2012). More information on different forms of imprisonment may be found in the ancient world, in the states such as Babylon, Persia, Greece, Israel, China and India (Nikolić & Kron, 2011).

No significant differences can be found in terms of imprisonment in the Antiquity and in the Middle Ages. As a rule, the imprisonment did not represent a punishment in itself but a measure meant to ensure detention, that is the guarding or possibly „correction" (Bosworth, J. (ed.) 2005). Such form of imprisonment aimed to prevent a person from escaping before being sentenced to death or other form of punishment, until their debts are paid, or their destiny decided. In other

words, to ensure the availability of the body as the primary subject of punishment. Imprisonment, as a means of securing one's presence for the purpose of executing a corporal punishment (executed in portions, a little each day) was in force in Serbia until the nineteenth century.

Imprisonment of this kind was imposed at various places: mines, holes, wells, caves, dungeons, old castles, monasteries and many other facilities for that suitable that hinder escape. The living conditions in these spaces and their effect on prisoners' health were of little significance.

The first important signs of changes in the imprisonment practice, yet not essential, occurred in the period from fifteenth to seventeenth century (Nikolić & Kron, 2011). Rapid development of cities and the migrations of people from the countryside have caused the increase of wanderers, loafers, vagabonds and other people alike who imposed a danger to the established order. Unlike Henry VIII, who tried to solve this issue by ordering 72.000 vagrants to be hanged (Radoman, 2016, p.34), his heir Edward VI donated his father's palace for the purpose of „guarding and correcting" morally handicap people (Roth, 2006, p.44). Thus, the first prison was founded in 1553, although not in the modern sense of the word. In the decades and centuries ahead, „Bridewell houses" spread across England. Still, these institutions where not the places where the prison sentence was served, that is where the individuals who committed serious crimes were incarcerated. In those institutions (houses of correction or workshops) vagrants, beggars and petty offenders with no means of subsistence were kept. So as to be held back from thievery or other petty crimes, they were kept in houses of correction and forced to work to support themselves. Evidently, these institutions were more like labour camps rather than prisons in the contemporary sense. Later, the idea of similar institutions spread even to continental parts of Europe where many more were built.

In the centuries ahead, many prisons were created for the purpose of closing the already built or adapted facilities (Nikolić & Kron, 2011): Amsterdam (1659), Lübeck, Bern and Danzig (1697), Hamburg (mid-eighteenth century). The Institute of St. Michael in Rome (1703), juvenile detention center in Milan (1759) and in the Netherlands (1775) are also worth the mention, as they were intended for „guarding and ed-

ucating" the young prone to delinquent behaviour and crime. The first prison in North America dates back to 1773 (Burlingame, 2012, p.9).

2.1.1. CONDITIONS OF PRE-MODERN CONFINEMENT INSTITUTIONS

If we agree that the conditions in most modern prisons of the nineteenth century were indisputably inhuman and harmful for the prisoners, we may inquire about the conditions of these institutions at the time of their establishment.

John Howard gave the most thorough overview of the situation in European prisons established by the end of eighteenth century, that can be found in his book The State of Prisons (Howard, 2015), first published in 1777. As already stated, the prison sentence as such did not exist, and imprisonment applied exclusively to debtors, beggars, the unemployed, homeless and the like, while death and corporal punishment still remained as primary form of punishment for serious offenses (along with the punishment of deportation – transportation that existed in colonial forces of the Western and Northern Europe). Out of 4.084 prisoners in England, in 1776, 2.437 were debtors, almost 60% of the total UK prison population (Howard, 2015).

Institutions of confinement of this period were relatively small in comparison to the ones present today. The biggest prisons of that period, as the ones in Napoli, Venice, present-day Netherlands, Portugal and Spain, could not hold more than 500 to 1,000 prisoners unlike modern prisons that keep thousands, even tens of thousands of people (e.g. the Los Angeles prison). Another point worth mentioning is the absence of centralization and organization of any kind when these institutions are concerned. While some were under the control of the state, others were founded by cities, counties, larger or smaller communities, depending on their needs and abilities as well as their criminal policy and philosophy.

By the end of the eighteenth century, the conditions in the institutions of confinement could be described disastrous, where „both the innocent and the guilty, man and women, girls and boys lived and died in misery, coldness and starvation" (Howard, 2015, p.7). The unfortu-

nates who ended up at such institutions often had it worse than slaves. For a slave owner, conservation of property for its long-term exploitation is a major objective. Conversely, nobody needed prisoners, no one protected or took care of them. The only attention a prisoner received was the one coming from other prisoners or jailers who perceived them as a source of profit, entertainment or both. People who entered institutions of confinement as healthy and strong individuals left sick and crushed, if they left at all. Ex-prisoners would become homeless beggars, often emotionally crippled and morally disengaged. As such, they couldn't find their place in an "honest" community. Thus, it was certain that they will return to prison or even undergo severe punishments.

In most cases, even the pig sties and stalls were kept in better conditions than prisons were. A farmer can benefit from the cattle, but nobody can benefit from a prisoner, except a guard or other prisoners. Ten to twelve people were forced to live in such godforsaken places in 10 square meters for 24 hours without windows, fresh air, in total dark or half-light, without running water or water of any kind, without toilet and even clothing, footwear, bed or furniture. By toilet we mean any space adapted for urination and defecation, an outhouse or any other place beyond the one the prisoners were enclosed at.

John Howard, a man who traveled nearly 7.000 km in his visits of European prisons, notes that it is a common sight that even the guards leave certain parts of prisons not only because of the unbearable smell but for fear of diseases as well. Clearly, prisons were overwhelmed with infectious diseases in such poor conditions. Even Howard himself got seriously sick during one prison tour despite all the taken precautions (e.g. washing clothes immediately after exiting prison, holding a handkerchief soaked in vinegar over the nose, and avoiding physical contact).

On the other hand, the situation was slightly better in several other prisons and detention centers (Bridewell Prison). Given that these facilities were mainly for debtors and petty thieves there was no need to incarcerate them in dungeons or other rooms alike. But, even so, the conditions were still disastrous. These facilities were overcrowded and everyone was kept in the same dwelling: the young and the old, men and women, children and returnees, primary offenders and even lunatics.

Moreover, food and beverages often did not come for free. Yet, the prisoners were expected to buy them from the guards, and the only way to earn money was by doing heavy labor, often in shackles. Gambling and alcohol consumption were quite common activities, often arranged by guards, as well as riots, quarrels, fights, harassment, extortion etc. and the discipline was imposed only when in guards' interest or under their obligation.

In addition to the guards, they often didn't receive a salary, they earned through a so called honorarium and basically their only duty was to prevent prison breaks. However, a job position of a guard was often sold or rented by the states, thus, those same guards would later exploit the prisoners to pay off the sum they invested for a respective position. They charged prisoners for various things starting from the entrance fee, bedding, food, water, sleeping pallets (if any), transportation costs for the trials, appeal fees, doctor's or pharmacist's consultations (if any medical protection even existed), visit costs, clothes and furniture renting and the gate money. When adding the debt for which one ended up in prison to all previously mentioned prison debts, plus the interest, the total sum substantially increases. Thereby, unless the prisoner possesses funds to cover all the costs thereof, the debt and the interest or unless there is someone to give payment instead, the only thing left is to attain money by doing heavy labor within the prison facility in hope to cover the total cost. Namely, even if one serves the prison sentence or is proven to be innocent, leaving the prison before paying off the total debt is not possible. Evidently, the conditions in prisons of that period drastically differ from the prison of the 21st century (more on that matter: Rusche, Kirchheimer, 1994).

Not only that the scheduling a trial sometimes took months but, at some places, it took years and even if the accused got released, the time spent in such a facility while suffering physical and emotional trauma, along with the material damage, remained irretrievable.

The aforedescribed conditions in prisons did differ from state to state or prisons of the same city. Yet, a pattern can be noticed according to which the conditions in prisons of all great powers of Europe such as France, England, German states or Russia were much worse than in smaller (yet wealthy) countries as the Netherlands, Belgium, Liechten-

stein and Switzerland. But, despite the existing differences, they were not of essence. It was still easy to end up in a prison, and quite hard to leave making the harm caused by the imprisonment notorious.

The stated condition represents consistent and exclusive application of retributivism in the concrete. The society itself is not interested in the consequences of punishments and the state is primarily there to maintain order, prescribe rules and secure that they are followed at all costs. Crudeness and complete absence of humanity remained a dominant principle. During this period, prevention with positive expectancies, purposefulness and humanity in punishment were not notably advocated. Both the government and „honest" citizens perceived prisoners and delinquents in general as the dregs of society, as the ones who didn't deserve better. The notion which states that anyone can become a prisoner since life is all but predictable and that actual people are held there, not monsters, was not widely accepted (and neither is now in the twenty-first century). Prisoners deserve to be treated decently.

It could be said that penitentiary practice is nothing but a mere reflection of values and perceptions of one society. Not until the attitude towards the purpose of punishment, man and his well-being, justice and freedom changed, could the prison sentence evolve (Radoman, 2016). Those were also the times of major social changes (French Bourgeois Revolution and The American War for Independence), changes in philosophy (the influence of the Enlightenment period), tectonic changes in science (positivism) and in law (the rapid development of natural law and the idea inalienable human rights). Subsequently, with all these changes comes a reform of incarceration expressed as imprisonment in the modern sense of the word, along with the birth of modern prisons.

In the chapter ahead, we will be dealing with the basic theoretical and philosophical understanding that left a mark on this great reform, or, better said, the birth of prisons without which the evolution of the very idea of imprisonment cannot be adequately understood.

2.2. AN IDEOLOGICAL REVOLUTION

The emergence of prison cannot be contemplated in isolation from major changes in science and philosophy of that time. The general mark of this period is the breach from religious mysticism, conservativism and fundamentalism along with the strengthening of rationalism as the dominant and implicit principle in science up to this day.

Theorists, and the society as a whole, accede the problem of crime and its repression in one essentially different manner. The concept of punishment is no longer seen exclusively as atonement, satisfying God's justice, bringing out justice or as defending sovereign majesty, but as a practice that should be useful and practical.

2.2.1. THE REVOLUTION OF GENERAL IDEAS

From the sixteenth to the eighteenth century, numerous social contract theories developed with the development of natural law theories. What they have in common is the strengthening of rationalism in perception of the society and state. The state and its institutions are no longer elucidated through religious theories or theories based on tradition, but rather through a more objective approach and often value neutral. The hypostasis of these new cognitions lies in the fact that the state is created on the basis of agreement between society members, directly or tacitly. It represents a qualitatively different community that, as such, can provide security and prosperity at a significantly higher level than pre-state formations could. In accomplishing this goal, certain authorities are transferred on the state, in other word, the state's members renounce the part of their rights, so the citizens and the members gain but also lose some things. The price of order and the certainty of polity is the absence of complete freedom, that is an obligation to follow a certain pattern of behaviour. Disrespecting this leads to sanctions.

This is, indeed, simplified representation of the social theory contract for the sake of realizing the qualitative changes in perception of the society and the state. The two are no longer seen as God's creations to whom unreserved obedience is owed, operated by ideal blessed rulers set by the providence. Likewise, the state is no longer considered a mys-

tic formation, but rather as an institution created by ordinary people for the purpose of achieving certain goals, for surviving and progressing. The state has no perennial rights - the citizens do. They are the ones with rights and freedoms they renounce partially or with a specific cause, so that such a common creation could function. These are also the times of general decrease of propencity to violence leading to a decline in severe corporal punishments, and subsequently a decline in severe corporal punishments, as well as the times of pacification of customs and everyday life (Misambled, 2015).

Finally, a new measure of evaluating reality is formed, along with all its occurrences, and that is usefulness, i.e. expediency. It was expected since this is, indeed, the age of enlightenment to which an epoch of positivism in science continues (fr. *positivism*, what comes from experience, lat. *positīvus*, what is, what exists, positive law – valid law, in contrast to historical or natural law). Social and natural phenomena are perceived empirically. What the state aspires to is determining objective conditions of one occurrence and factors of its dynamics so that it could be controlled or suppressed.

All this led to numerable changes in European societies and ultimately to the creation of industrial countries based on the principals of rationality with the guarantee of private property in gradual secularization of social life

2.2.2. THE CLASSICAL SCHOOL OF LAW

The same approach is used in criminal law. The classical school of law begins with the first significant and systematic study of ways and procedures for preventing and suppressing crime (Jovašević & Kostić, 2012). For the first time, theorists of this school manage to define general legal concepts in criminal law in a legally and formally correct way. All of the above, together with the newly set requirements in this area of law (primarily the requirement for a consistent principle of legality), leads to the birth of a new approach to punishment and imprisonment, in the contemporary sense of the word. Concurrently, penology is es-

tablished as the science of punishment along with criminology as the science of crime.

Considering the subject of this paper, the concepts and principles of this school will not be discussed in detail here, but only its basic ideas, formulated by Cesare Beccaria in 1763 in his famous treatise "On Crimes and Punishments" (Beccaria, 1984). These ideas will have a huge impact on science and practice of criminal law as a whole.

Beccaria's ideas can be set forth through three basic requirements (Pradel, 2008):

1. Strict legality in criminal law,

2. Reducing the number of incriminations to a reasonable level

3. The utilitarian nature of punishment

Firstly, Beccaria himself requested the introduction of today's undisputed strict legality into criminal law. He was the first one to define a complete principle of legality in this area of law. This principle applies not only to criminal offenses and penalties (lat. *nullum crimen sine lege, nulla poena sine lege*) but also to the procedures of detecting and adjudicating criminal offenses as well as the execution of imposed sentences. The principle of legality covers criminal substantive law as well as criminal procedural and criminal executive law. Moreover, the idea that the scope of jurisdiction of judges, prosecutors, police officials and investigators, as well as prison guards, must be precisely and clearly defined in advance, is born. Beccaria went so far in his request that he advocated for absolute punishments in which the judge's role would be applying the law in a machine-like manner. With no room for interpretation and creativity, there can be no abuse of the legal system. Being aware of all the arbitrariness and abuse that took place in his time, he believed that the only solution for overcoming this difficult situation was to completely take away the subjects' right to act freely.

Beccaria's second request is in a way, a link or connection between the first and the third request. If there are countless rules and

if they are scattered across various, inaccessible codes of law, statutes, decrees, decisions and other written or unwritten enactments, how can ordinary citizens (which were, at that time, illiterate and completely uneducated) be expected to know and respect those rules? When a commandment is not known then how can it be obeyed? If the expectation to follow a certain unknown rule is unrealistic, what justifies the punishment for the violation of that rule? In order for bans to be effective and purposeful, they must be accessible and therefore moderate in number.

The third request Beccaria made is also the one that bears most significance to us. Beccaria is an author who demands an abrupt transition from the philosophy of retributivism to the ideas of consequentialism in criminal law in general. According to him, punishment must serve a purpose, and not some abstract, distant purpose, but a practical and feasible one.

"Punishments are only intended to prevent the perpetrator from continuing to harm society and to deter others from committing crimes" (Pradel, 2008, p. 27). Negative special and general prevention should be the starting point for and source of punishment, as well as the only justification and criterion for evaluation. From this above stated request, many other requests arose that, in their extremes, lead to the appearance of modern prisons.

All punishments whose primary goal is to inflict pain, to cause suffering, torment, offense, disgust or other similar distress are completely superfluous and harmful. Beccaria is primarily against the death penalty and corporal punishment, while he advocates for the increased use of fines, forced labor and imprisonment. Only these punishments can achieve the stated goal. Torture, mutilation and similar abuses serve nothing but the destruction of man, which has not proven to be the way in which his stated goal could be achieved.

In addition, Beccaria demands the introduction of equality in punishment. Punishment should apply equally to the wealthy as well as the poor, the powerful as well as the powerless. This principle was not fully accepted for a long time and even today, when it is formally respected in practice, it does not always yield equal results. The unfair treatment of those undeserving of it (protection and nepotism) is not uncommon. On the other hand, if a fine is envisaged or primarily

applied for certain conduct while the prevention of criminal offenders committing such acts is non-existent or ineffective, then this kind of illegal behaviour is forbidden primarily for the poor.

The last thing to mention here is the understanding that the certainty of receiving punishment is much more effective in prevention than the brutality of its execution. Being said with reference to contemporary legal terminology: the certainty that a legal norm will be applied has a much stronger effect on potential criminal offenders in terms of deterrence (prevention) than the monetary amount of the threatened punishment. If the opposite were true, crime would not have existed in the ancient times and the medieval century since one would have his hand cut for theft, a nose for insulting someone, while for attacking a figure in power, the offender would be impaled, tortured and severely mutilated. In his work "Discipline and Punish", Foucault gives a very detailed description of all the torment inflicted on Damien, an unsuccessful assassin of French King Louis XV. He was tortured, slashed, his body carved into and parts of his body cut off. After that, his wounds were tended to so as to prevent premature death and they proceeded to rip off his skin, remove his eyes and pull out his limbs. This process lasted several days and was performed publicly as a large ceremony in front of a crowd of gathered citizens.

All these requirements influenced numerous theorists, philosophers and practitioners, both legal and other, to gradually and fully reform criminal law which lead to the emerging of modern prisons.

When it comes to punishment and everything it encompasses, specifically the reform of prisons, the most important representative of the new orientation is the English philosopher and theorist Jeremy Bentham (1748-1832 BCE). As a contemporary of Kant, Howard, Beccaria and many other greats of this significant period, he was knowledgeable of the societal problems of that time, as well as new currents and new ideas which he largely shaped.

2.2.3. THE PANOPTICON

Bentham introduced a completely new approach to imprisonment as a form of punishment in his work "Panopticon" (1787). Although the idea of a panopticon has never been applied in its purest form, Bentham's understanding of the prison appearance and its function will have a huge impact on both theorists and public authorities over the next century.

Bentham sought to design an institution of imprisonment that would eliminate corruption, arbitrariness, conspiracy, epidemics, and disease (Bentham, 2014). Bentham interestingly stated that the First English Fleet lost over 2,000 people to disease during the American War of Independence, which was the result of a contact with a released inmate from a London prison. More people lost their lives to the disease than they did in the naval battles and the war at sea itself.

In order to accomplish his goal, he designed a series of architectural and other solutions, on which a prison should be based. The principal idea is constant, omnipresent and omniscient supervision. The prison should be in the shape of a rotunda. It should not be too large and its circumference should be approximately 30 meters. It should have two floors with 4.5 m2 (about 2.5m x 1.8m) cells arranged circularly. Theoretically, this type of prison could hold approximately 96 inmates and if the number of floors increased, approximately 300 inmates could be held in one institution.

The building should have circularly arranged cells around a supervision tower placed in the center of the otherwise empty middle space.

Bentham thought this design could also be used for mental health institutions, hospitals as well as schools and factories, that is, institutions where constant supervision and control is needed. It is from these ideas that Foucault's idea of "panopticism" developed as a new mechanism for universal control and supervision of the modern state over its citizens.

In theory, each prisoner should have his own cell, separated from the neighboring cells by side walls in order to prevent communication between prisoners, and thus criminal infection, as well as the

arranging and planning of breakouts and riots. There should be a large window on the outer wall through which light could enter the cell in addition to fresh and clean air while the inner wall should be open and covered with bars. This design would allow the supervisor standing in the central supervision tower (which is obscured to prevent prisoners from seeing if and when the supervisor is present and watching them), to be able to control large groups of inmates with ease, independently and with great certainty. Each prisoner should reside in a clean cell, with a sufficient amount of water, food, and if possible, a toilet. This does not imply luxury by any means, but instead the minimal and acceptable conditions so as not to harm the prisoners' health. The life of a prisoner, no matter how "decent" it may be, must not be better than the life of an average law abiding citizen (Rusche & Kirchheimer, 1994). The purpose is to eliminate infection and disease, and also difficult conditions and high mortality rates in prisons. But, what is the purpose of these efforts?

The panopticon is supposed to solve the problem of criminality by using discipline and the supervision and control of the majority by the minority. Violence, torture, miserable living conditions and senseless violence never brought anything good for society and institutions that represented such conduct. These types of institutions, which were perceived as hell on earth and were hotspots for infections, were to be replaced by institutions of absolute control.

Inside the panopticon, every prisoner is under full supervision and control and his every move is visible. There is no need to use coercion, force or even threat because the fact that the prisoners know that they are under surveillance at all times and highly likely are being watched every second, is a sufficient control mechanism on its own As stated previously, the certainty of punishment is drastically more effective than brutality.

In this way, the efficient confinement of prisoners is ensured. They are supervised and therefore cannot harm themselves or others. However, this is only the initial phase. Establishing complete control through constant supervision is only a prerequisite for taking the subsequent measures. Once control is established, it is quickly made clear that the prisoner is not on vacation and the prison is not a hotel. Prisoners are required to work all day on prison grounds, but their work should

not be pointless or torturous. They should partake in activities that are profitable for the institution while also enabling the prisoners to develop their working abilities.

From these rather simplified presentations of Bentham's ideas and the panopticon, one can observe a couple of basic principles which were revolutionary and would be utilized as guiding ideas for reforms which emerged in the following century:

1. The conditions of prisons must not be such that they are considered torture and can easily result in subsequent death,

2. The prison facility must be organized in a way that complete and constant observation of all prisoner activities is possible, 24 hours a day, 7 days a week.

3. The prisoners must work. Partly for the reason of sustaining the facility in an economical way, but also in order to prevent mental deterioration of prisoners which would in turn make their reintegration into society impossible.

4. The prisoners must be separated from one another. Both to prevent criminal infection and also to keep the order inside the prison.

Societies can benefit from this type of prison punishment, not only because it puts away criminals, but also due to the fact that these facilities are no longer breeding grounds of illness, immorality and crime. Moreover, the benefits for prisoners themselves are more than apparent. This type of prison enables for punishment through the imprisonment to become the basic form of punishment meant to replace corporal punishment as well as the death penalty, which will gradually disappear from legal systems across Europe throughout the nineteenth century.

A handful of prisons were built under the indirect influence of Bentham's panopticon (Bentham, 2014, p.117), such as Poona in India (1818), Millbank in London (1830), the Round House prison in Australia (1830) and also many more.

The most significant disadvantage of this approach is that the prisoner is seen as an object. The prisoners are seen as passive entities

to which certain measures are applied and which are expected to accept these measures automatically, in a planned way. Prisoners will show that they are not just passive objects, but that they actively oppose all forms of intervention in prison, which will in turn lead to further changes to imprisonment in the twentieth and twenty-first century.

2.3. THE APPEARANCE OF MODERN PRISONS

Developments in science and philosophy, new sensibilities, strengthening the idea of rights and human rights in general, as well as strengthening the idea of utilitarianism and rationalism in the nineteenth century bring about the first great reforms in the practice of serving the custodial sentence.

The first legally regulated system of prison sentence is the solitary confinement system, also referred to as the Pennsylvania or Philadelphia system (Radoman, 2016), born in the United States of America in the beginning of the nineteenth century. The system entails strict separation of prisoners into cells, without any possibility of communication with others. The complete isolation was utilized in order to stop the spread of criminal infection, as the solitary confinement was a way to leave prisoners alone with their thoughts, which was intended to help them understand and overcome the "sins" they committed which led them to prison in the first place.

After the solitary confinement system, the Auburn system is introduced, also founded in the USA. Similarly, it entailed the strict confinement of inmates, however it did, to an extent, allow working and some visual communication among them.

Towards the end of the nineteenth century, the progressive prison system appears. The previous systems and prisoner isolation, which turned out to be incompatible with human nature, are replaced by a new approach. The progressive prison system implies having trust and faith in prisoners themselves. The prison punishment is divided into distinct phases. It is necessary for prisoners to go through all phases in order to serve their sentence, however, prisoners can affect and contribute to shortening of particular phases, and thus, their sentence in general. If inmates behave in a disciplined manner, work hard, respect

rules and orders, learn a trade, fulfill work or other quotas, or in other words, properly carry themselves, they will move onto the next phase of their sentence in a shorter period of time. The better the prisoners carry themselves, the shorter their sentences will be.

The progressive prison system (in its many variants) has remained the principal system of punishment until today. The only newly introduced concept in contemporary penitentiary systems is the emphasized idea of classification. In order for the objectives of punishment to be fulfilled, it is necessary to carefully classify those convicted. Those committing less severe crimes, as well as first-time offenders should not serve their sentence with those who committed more serious crimes. Moreover, women should be separated from men, children from adults, older prisoners from younger ones, the sick from the healthy and so forth. The level of classification depends, first and foremost, on the economic resources of societies.

The punishment through imprisonment and prison facilities in Serbia appear relatively late (Mirković, 2013). Prior to the First Serbian Uprising, imprisonment as such did not exist. Throughout the period of the uprising in Serbia, prison punishment began to appear sporadically, mostly as a means to ensure presence in the process of other forms of punishment. The development of penitentiary practices in Serbia can be traced from the second half of the nineteenth century and after the abolishment of corporal punishment, as well as after the appearance of the first prisons and the adoption of the first Criminal Code in 1860.

3. CONCLUSION

If the idea of punishment as such is as old as society itself, then it is not static, i.e. defined and unchangeable. If there is a wide diversity of the dominant values and practices, the practice of punishment will also reflect this diversity.

The entire history of punishment can be roughly divided into two major periods. The period of private retribution lasted longer and encompasses the period from the first primitive societies to the first or-

ganized states of the Antiquity. The shift did not happen everywhere and at the same time. The organization of numerous societies remained at a tribe level long after the first states were formed. Even today, a significant number of human population still lives in pre-state tribe formations. All this is characteristic for the period of private retribution – the absence of any system, i.e. organized punishment and great influence of tradition, while the opposite stands for punishing within the state. With the emergence and strengthening of the state, specialized state bodies, under the control of a ruler, are completely in charge of criminal punishments, which are less based on tradition, but more on the needs of the society, including the ones who represent it, that is the ones who operate it.

In this sense, the period of state reaction is not distinctive either. Several phases can be noticed. Firstly, the phase of intimidation and suffering which roughly corresponds to the retributivist concept of punishment. Also, the phase of humanization and individualization followed by the change in consciousness towards consequentialism, more specifically utilitarianism and utilitarian penal practice.

During this time a person's life and well-being were low on society's values scale and criminal practice could be nothing but cruel. It was only when significant changes in science and philosophy happened, and consequently changed the social trends at the end of the eighteenth and the beginning of the nineteenth century, a qualitatively different conception of an individual, the state and their mutual relationship was formed.

The strengthening of positivity in science and philosophy brought about the demystification of offenders. All of the above, together with the new demands arising from the French and American revolutions, led to the theoretical and radical reform of the punishment practice and the appearance of the modern concept of imprisonment and prisons.

For much of its history, the criminal system had not experienced neither major nor drastic changes. Yet, in the last two centuries some substantial changes did occur due to a completely changed perception of the nature and purpose of punishment.

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THE BIRTH OF PRISONS– EVOLUTION OF AN IDEA

Abstract: A society without norms does not exist, just as norms that are not violated do not exist. The reaction of society to violation of basic norms on which it itself is based largely depends on the epoch, that is, on the value core on which the society itself is based. Imprisonment has always existed, but it has changed drastically throughout history—from imprisonment without purpose and meaning, alongside torment and suffering, to modern forms of deprivation of liberty and modern prisons. The ideological revolution has changed the value basis of society, thus changing all the norms that had arisen from such values. The perception and expectations of punishment have changed and, from the 18th and 19th centuries onwards, a new concept of prison as an institution of control, correction, i.e. re- socialization has been developing. Prison has ceased to be seen as hell on earth and became an instrument of society's influence on those who dare to violate social norms. This paper follows this evolution, that is, the development of prisons and the idea of imprisonment from holes and lagoons to modern penitentiaries.

Key words: prison sentence, penal law, prisons, penology, incarceration, criminal penalties.

Prikazi

Reviews

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PRIKAZ KNJIGE

OSIGURANJE I PREDUZETNIŠTVO: TEORIJSKA I EMPIRIJSKA ANALIZA MEĐUZAVISNOSTI

Autor knjige, prof. dr Vladimir Njegomir, uspeo je, uz velik trud, da u celovitosti ukaže na problematiku međuzavisnosti osiguranja i preduzetništva. Ovu tematiku je autor, osim teorijski, analizirao i empirijski i to po prvi put na našem prostoru, *a među prvima i u svetu.* Monografija je nastala kao rezultat nastojanja autora da se potvrde utemeljene teorijske postavke da osiguranje utiče pozitivno na preduzetništvo. Pored toga, analiziran je i povratni uticaj preduzetništva na osiguranje, kao i zajednički uticaj na ekonomski rast.

Monografija predstavlja rezultat dugogodišnjih istraživanja autora u predmetnoj oblasti. Bazira se na dosadašnjim istraživanjima, projektima, objavljenim člancima i knjigama profesora dr Vladimira Njegomira.

Pozitivnu ocenu monografija prof. Njegomira dobila je od tri recenzenta, doajena u oblasti osiguranja: akademika prof. dr Wolfganga Rohrbacha, prof. emeritusa dr Borisa Marovića i prof. dr Zdravka Petrovića. Recenzenti su istakli da monografija predstavlja izvorni autorski doprinos, te da je problematika međuzavisnosti osiguranja i preduzetništva izložena logički, jednostavnim ali stručnim jezikom, na sistematizovan, pregledan i informativan način. Teorijska osnova i praktična primenljivost predstavljenih pitanja, u kombinaciji sa dugogodišnjim uspešnim profesionalnim iskustvom i akademskim i empirijskim istraživanjima autora, garantuju teorijsku i praktičnu vrednost ove mono-

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grafije. Recenzenti preporučuju knjigu profesionalcima u osiguranju, preduzetnicima, predstavnicima vlada, studentima osnovnih i postdiplomskih studija i svima onima za koje je potrebno da nauče ili imaju interes da nauče o osiguranju, preduzetništvu i njihovoj međuzavisnosti i razvoju.

Autor je sadržinu monografije obradio korišćenjem ogromnog opusa literature od preko 396 izvora, 30 grafičkih prikaza i 51 tabelarnog prikaza. Knjiga predstavlja skladno komponovano delo, čiju strukturu, pored predgovora, zaključaka, literature i podataka o autoru, čini sedam logički zaokruženih celina, pisanih uobičajenim proredom i fontom na 302 stranice.

Prvo poglavlje autor posvećuje postavljanju problema za teorijsku i empirijsku analizu. Autor je prvo sproveo pregled i analizu prethodnih istraživanja u osiguranju i preduzetništvu. Takođe, analizirao je širi kontekst potrebe za analizom međuzavisnosti osiguranja i preduzetništva.

U drugom poglavlju analiziraju se značaj i ograničenja osiguranja i tržišta osiguranja. Autor detaljno analizira istorijski kontekst i determinisanje osiguranja. Započinje istorijom osiguranja kako bi objasnio savremene funkcije i zakonitost osiguranja. Takođe, analizira vezu između preduzetništva, neizvesnosti i osiguranja. Autor determiniše mehanizam tržišta osiguranja i njegove učesnike na globalnom tržištu osiguranja. Takođe određuje i analizira globalna kretanja na tržištu osiguranja i detaljno objašnjava karakteristike tržišta osiguranja u regionu bivše Jugoslavije, imajući u vidu da su empirijska istraživanja takođe usredsređena na taj region, odnosno Srbiju.

U *trećem poglavlju* autor se posvetio analizi fenomenoloških aspekata preduzetništva. Nakon detaljnog objašnjenja istorije osiguranja, ekonomske uloge i ograničenja osiguranja, kao i funkcionisanja i učesnika na tržištu osiguranja, autor se fokusira na preduzetništvo. U ovom poglavlju autor određuje koncept preduzetništva i objašnjava faze i stanje razvoja i regulative preduzetništva u razvijenim ekonomijama, ekonomijama u razvoju i posebno u Srbiji.

Četvrto poglavlje je u potpunosti posvećeno analizi međuzavisnosti upravljanja rizicima, osiguranja i preduzetništva. Autor objašnjava povezanost rizika i ekonomskog razvoja uopšte i detaljno objašnjava faktore rizika, verovatnoću realizacije događaja i intenzitet štetnih posledica tih događaja. Analizira averziju prema riziku i potrebu upravlja-

nja rizikom pojedinaca, preduzetnika i društva. Akcenat je na teretu rizika za preduzetnike i značaju upravljanja rizicima. Zatim se analiziraju proces upravljanja rizikom preduzetnika i metode upravljanja rizikom koje se koriste u tom procesu. Autor analizira rizike u preduzetništvu i potrebu za privatnim osiguranjem.

Peto poglavlje se fokusira na međuzavisnost druge najvažnije funkcije osiguranja i preduzetništva. U ovom poglavlju autor se fokusira na potencijalnu međuzavisnost investicija osiguravajućih društava sa finansiranjem preduzetničkih poduhvata. Autor analizira strukturu finansijskog sistema i položaj osiguravajućih društava, regulaciju osiguravajućih društava kao finansijskih posrednika i karakteristike investicionih portfelja osiguravajućih društava. Odvojeno analizira upravljanje životnim i neživotnim investicionim portfeljom.

Autor je sproveo dva empirijska istraživanja međuzavisnosti osiguranja i preduzetništva. *Šesto poglavlje* je posvećeno prvom empirijskom istraživanju koje je sprovedeno na osnovu sekundarnih podataka. Autor je analizirao uticaj nekoliko nezavisnih promenljivih na razvoj preduzetništva. Kao nezavisne promenljive koristio je premiju po preduzetniku, obeštećenje po preduzetniku, tehničke rezerve, bruto domaći proizvod, zajmove domaćih banaka, indeks ljudskog kapitala i troškove osnivanja. Rezultati su dobijeni primenom regresione analize.

U *sedmom poglavlju* autor se fokusira na drugo, dopunsko empirijsko istraživanje međuzavisnosti osiguranja i preduzetništva. Ovo istraživanje se bazira na podacima dobijenim putem upitnika u terenskom istraživanju. Podaci su prikupljeni za reprezentativan uzorak od 460 preduzetnika. Preduzetnici su odgovarali na 12 pitanja, a njihovi odgovori sa tumačenjima prikazani su grafički i tekstualno u ovom poglavlju. Potom su primenjeni analiza varijanse na ove podatke, Spermanov test koeficijenta korelacije ranga, korelaciona i regresiona analiza.

Svojim obuhvatom i specifičnom tematikom, knjiga je prvenstveno namenjena profesionalcima u osiguranju, preduzetnicima, menadžmentu osiguravajućih društava, posebno na strateškom nivou, posrednicima i zastupnicima u osiguranju, kao i predstavnicima vlada. Takođe, korisna je referentna literatura za studente osnovnih i poslediplomskih studija, kao i svima onima koji žele da spoznaju izloženu problematiku razvoja i međuzavisnosti osiguranja i preduzetništva.

IZVOD IZ RECENZIJE

Autor je monografiju podelio u dva dela. Prvi deo se odnosi na teorijsku analizu osiguranja i preduzetništva i njihovu međuzavisnost. U drugom delu autor predstavlja empirijske studije međuzavisnosti između osiguranja i preduzetništva. Knjiga je namenjena profesionalcima u osiguranju, preduzetnicima, predstavnicima vlada, studentima osnovnih i postdiplomskih studija i svima onima za koje je potrebno ili imaju interes da nauče o osiguranju, preduzetništvu i njihovoj međuzavisnosti i razvoju.

Akademik Univ. Prof. Dr.phil. Dr.habil. Volfgang Rohrbach

Profesor Njegomir knjigu je napisao na pristupačan, sistematizovan, informativan i edukativan način. Ona je zasnovana na dugoročnim istraživanjima i autorskom radu u upravljanju rizicima, osiguranju, reosiguranju i preduzetništvu. Teorijska osnova i praktična primenljivost predstavljenih pitanja, u kombinaciji sa dugogodišnjim uspešnim profesionalnim iskustvom i akademskim i empirijskim istraživanjima autora, garantuju teorijsku i praktičnu vrednost ove monografije.

Prof. emeritus dr Boris Marović

Ova monografija predstavlja izvorni autorski doprinos analizi međuzavisnosti osiguranja i preduzetništva. Među prvima je sa sveobuhvatnom, empirijski potvrđenom studijom ovog problema. Ova jedinstvenost i originalnost čine ovu knjigu posebno značajnom za objavljivanje. Zadovoljstvo mi je da preporučim ovu knjigu široj obrazovnoj, naučnoj i stručnoj javnosti.

Prof. dr Zdravko Petrović

O AUTORU

Profesor Njegomir je jedan od najplodnijih mlađih naučnika iz oblasti osiguranja, upravljanja rizikom i reosiguranja. Ima dva doktorata, jedan iz strukturnih finansija u oblasti alternativnog transfera rizika osiguranja i reosiguranja, a drugi u oblasti analize međuzavisnosti osiguranja i preduzetništva. Bio je nagađen za najboljeg studenta u generaciji 2001. godine. Za naučnoistraživački rad nagrađen je od Narodne banke Srbije 2011. godine.

Bio je angažovan u dve kompanije za proizvodnju finansijskog softvera sa sedištem u Londonu, kao savetnik u sektoru za strateško planiranje, korporativno upravljanje i analizu poslovanja Dunav osiguranja. Zaposlen je kao redovni profesor na Fakultetu za pravne i poslovne studije, gde obavlja funkciju prodekana za naučnoistraživački rad i funkciju prodekana za izdavačku delatnost.

Objavio je 14 autorskih i koautorskih knjiga i preko 150 radova. Pisao je i objavljivao radove iz oblasti računovodstva i finansija, a posebno upravljanja rizicima, osiguranja i reosiguranja, odnosno oblasti analize pojedinih vrsta rizika i tendencija ostvarenja rizika uzrokovanih faktorima kao što su klimatske promene i privredni razvoj, upravljanja rizikom i kapitalom i njihovim međuzavisnostima, regulatornih, računovodstvenih i finansijskih aspekata delatnosti osiguranja, upravljanja međuzavisnostima imovine i obaveza u osiguravajućim društvima, analize stanja i trendova u liberalizaciji, tržišnoj strukturi i globalizaciji i drugih segmenata oblasti upravljanja rizikom, osiguranja i reosiguranja. Publikovao je u vodećim naučnim časopisima kao što su „The Geneva Papers on Risk and Insurance – Issues and Practice", „Transformations in Business & Economics, Economic Thought and Practice", „Economic Research" i dr.

Glavni i odgovorni urednik je naučnog časopisa „Civitas", *član* je uredništva „Sveta osiguranja", član je Saveza ekonomista Srbije preko društva ekonomista Novog Sada i član je Naučnog društva agrarnih ekonomista Balkana.

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BOOK REVIEW

INSURANCE AND ENTREPRENEURSHIP: A THEORETICAL AND EMPIRICAL ANALYSIS OF INTERDEPENDENCE

Professor Vladimir Njegomir's book comprehensively and thoroughly addresses the issue of the interdependence between insurance and entrepreneurship. This issue is analysed both theoretically and empirically, which is a ground-breaking achievement both on a local and global scale. The author's findings support the established theoretical hypothesis that insurance has a positive influence on entrepreneurship. Moreover, the book contains an analysis of the reciprocal influence of entrepreneurship on insurance, and their mutual influence on economic growth.

This book is the result of long-term research in the field of insurance, and is based on Njegomir's previous research projects and publications.

Professor Njegomir's book has received positive appraisals from its reviewers, renowned scholars in the field of insurance such as: Professor Wolfgang Rohrbach (European Academy of Sciences), Emeritus Professor Boris Marović, and Professor Zdravko Petrović. According to reviewers, the book's findings represent an original scientific contribu-

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tion on the part of the author: the issue of the interdependence between insurance and entrepreneurship is explained in a logical, simple and professional language, and in a systematized and informative manner. The theoretical framework and practical applicability of topics, combined with the author's professional expertise and empirical research, signify the theoretical and practical value of the book. This publication can be recommended as a valuable source to insurance professionals, entrepreneurs, government officials, graduate and postgraduate students and all those with a need or desire to study insurance, entrepreneurship and their interdependence and development.

The book contains a vast array of sources, encompassing more than 396 items, 30 graphs and 51 tables. The book is 302 pages long, divided into seven chapters, and also includes a preface, conclusion, bibliography, and author's biography, written in standard line spacing and font.

The first chapter lays out the research problem to be investigated using theoretical and empirical analysis. The author first gives an overview of previous research in insurance and entrepreneurship and asserts the need to analyse the interdependency between the two.

The second chapter examines the importance and limitations of insurance and insurance markets. The author provides a detailed analysis of the historical context and development of insurance. He begins by discussing the history of insurance to explain the present functions and laws of insurance, as well as the relationship between entrepreneurship, uncertainty and insurance. Njegomir identifies and analyses the insurance market mechanisms and global insurance market participants and trends. The chapter contains a detailed examination of the insurance market in the ex-Yugoslav region, as the empirical research is focused on this region, specifically on Serbia.

The third chapter presents an analysis of the phenomenological aspects of entrepreneurship. After a thorough examination of the insurance history, its role and limitations in an economy and its functions and market participants, the author focuses on entrepreneurship. The chapter defines the concept of entrepreneurship and examines the stages of development and legislation related to entrepreneurship in developed and developing countries, with a focus on Serbia.

The fourth chapter deals exclusively with analysing the interdependence between risk management, insurance and entrepreneurship. The author discusses the interconnectedness of risk and economic growth in general, explaining risk factors, event probability and the damage intensity of undesirable events. He also discusses risk aversion and risk management needs for individuals, entrepreneurs and society as a whole, emphasizing the burden of risk for entrepreneurs and the importance of risk management. The chapter also includes an analysis of the risk management process in entrepreneurship, the methods used in this process, risk factors in entrepreneurship and private insurance needs.

The fifth chapter deals with the interdependence between the second most important role of insurance and entrepreneurship. The author discusses the potential interdependence between insurance company investments and financing business ventures, analysing the financial systems structure and the position of insurance companies within it, the role of insurance companies as financial mediators and the features of their investment portfolios. The chapter includes separate analyses of both life insurance and non-life insurance investment portfolios.

Two empirical studies of the interdependence between insurance and entrepreneurship were carried out. The sixth chapter focuses on the first study, which was performed based on the secondary data obtained. The impact of several independent variables on entrepreneurship development was analysed, using the following variables: premium per entrepreneur, liability insurance coverage per entrepreneur, technical reserves, GDP rate, domestic bank loans, Human Capital Index and start-up costs. The results were obtained by applying regression analysis.

The seventh chapter focuses on the second, additional study of the interdependence between insurance and entrepreneurship. This study is based on the data obtained from a survey done on a sample of 460 entrepreneurs. The survey consisted of 12 questions. This chapter includes the participants' answers and discussion, presented textually and graphically. The data was interpreted by applying analysis of variance, Spearman's rank correlation coefficient and correlation and regression analysis.

Due to its scope and subject, this book is a valuable resource for insurance professionals, entrepreneurs, insurance company strategic managers, insurance mediators and agents fand government representatives. It also makes for a useful reference book for undergraduate and graduate students, as well as anyone interested in the development and interdependence between insurance and entrepreneurship.

EXCERPT FROM THE REVIEW

"The book is divided into two parts: the first part includes a theoretical analysis of insurance, entrepreneurship and their interdependence, while the second part focuses on the empirical studies of the interdependence between insurance and entrepreneurship. This publication is recommended as a valuable source to insurance professionals, entrepreneurs, government officials, graduate and postgraduate students and all those who need or want to study insurance, entrepreneurship and their interdependence and development. "

Professor Wolfgang Rohrbach, European Academy of Sciences

"This book is the result of long-term research in the field of insurance, and is based on Professor Njegomir's previous research projects and publications. It is written in logical, accessible and professional language, and in a systematized and informative manner. The theoretical framework and practical applicability of the topics, combined with the author's professional expertise and empirical research ensure the book's theoretical and practical value. "

Emeritus Professor Boris Marović, University of Novi Sad

"This book represents an original scientific contribution on the part of the author. Professor Vladimir Njegomir's book comprehensively and thoroughly deals with the issue of the interdependence between insurance and entrepreneurship. This issue is analysed both theoretically and empirically, which adds to the book's unique value. It is a pleasure to recommend this book to different readerships – scholars, professionals and the public. "

Professor Zdravko Petrović, Union University

ABOUT THE AUTHOR

Professor Vladimir Njegomir is one of the most prolific scholars of the younger generations in the field of insurance, risk management and reinsurance. He holds two PhD degrees: one in Structural Finance (alternative risk transfer insurance and reinsurance), and the other in Interdependence between Insurance and Entrepreneurship. He was named the best student of the 2001 class at the University of Novi Sad. He was awarded by the National Bank of Serbia for his scientific research.

Vladimir Njegomir spent his first professional years employed in two finance software companies headquartered in London. Afterwards, he worked as a consultant in the Department for Strategic Planning, Corporate Management and Business Analysis for the Dunav Osiguranje insurance company. Today he is employed as a Full Professor, a Vice-Dean for Scientific Research and a Vice-Dean for Publishing at the Faculty of Law and Business Studies in Novi Sad.

He has published 14 books as an author and co-author, as well as more than 150 articles. His articles deal with a wide range of topics in the field of accounting and finance, in particular risk management, insurance and reinsurance, specific risk analyses, risk realization tendencies caused by factors such as climate change and economic growth,

risk and capital management and their interdependence, regulatory, accounting and financial aspects of insurance business, assets and liabilities interdependence management in insurance companies, current states and trends in liberalization, market structure, globalization and many other aspects of risk management, insurance and reinsurance. His work has been published repeatedly in eminent scientific journals, such as *The Geneva Papers on Risk and Insurance - Issues and Practice*, *Transformations in Business & Economics, Economic Thought and Practice*, *Economic Research*, among others.

Professor Njegomir is the Editor-in-chief of the Civitas journal and a member of the Editorial Board of the Svet Osiguranja Journal, the Serbian Association of Economists, the Novi Sad Association of Economists and the Balkans Scientific Association of Agrarian Economists.

POZIV I UPUTSTVO AUTORIMA

Pozivamo sve zainteresovane autore da pošalju radove iz oblasti društvenih istraživanja ukoliko isti ranije nisu objavljivani u drugim časopisima. Rok za prijem kompletnih radova za prvi broj je **01. april** a za drugi broj je **01. oktobar**.

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Redakcija časopisa zadržava pravo da članak prilagodi jedinstvenim standardima uređivanja i pravopisnim pravilima srpskog i engleskog jezika.

FORMAT I STIL RADA

Svi radovi koji se šalju započinju navođenjem (u gornjem levom uglu) **imena i prezimena autora** fontom Times New Roman 12 pt, a u fusnoti označenoj zvezdicama za svakog autora navodi se titula, naziv ustanove u kojoj je autor zaposlen, adresa i kontakt podaci fontom Times New Roman 10 pt.

Naslov rada piše se na sredini, velikim slovima i podebljano (font Times New Roman 14 pt).

Pre samog teksta piše se kratki **rezime** obima do 8 redova i **pet ključnih reči** (u proredu *sin- gle* i fontu 10).

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Tekst se piše fontom Times New Roman 12 pt i trebalo bi da sadrži cilj rada, korišćene metode, rezultate istraživanja i zaključke. Na kraju teksta, posle zaključka navodi se **literatura**.

Posle navođenja literature, pišu se **naslov rada, rezime i ključne reči** na engleskom jeziku ukoliko je rad na srpskom ili srpskom jeziku ukoliko je rad na engleskom. Naslov rada piše se velikim slovom, podebljano, fontom Times New Roman 14 pt a rezime i ključne reči pišu se fontom Times New Roman 10 pt.

Ukoliko rad sadrži fusnote (napomene uz tekst koje ga dodatno pojašnjavaju), one se pišu u proredu *single* i fontu 10. U fusnotama se *ne navodi* literatura, nego se ona, sledstveno *APA stilu*, navodi kao integralni deo osnovnog teksta.

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CITIRANJE U TEKSTU

LITERATURA

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Pravilo: Jedan autor

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Poričući kao osnovni aspekt sopstvene seksualnosti i identiteta muškog, on se, prema rečima Volfenštajnove (1974), „okrenuo od stvarnosti koja se pokazala tako nepod- nošljivo razočaravajuća“ (str. 9).

b. Kada se autor ne pominje u rečenici onda njegovo prezime, godinu izdanja rada i broj strane u radu stavljamo u zagrade i na kraj rečenice. Ako je citat nastao **parafraziran- jem** ili **rezimiranjem** onda podatak o broju strane nije neophodan.

primer:

Produktivan stvaralački nivo gubi svojstva umetničke komunikacije, a dobija svojstva magijskog ili vračanja (Kris, 1953).

c. Ako citat koji se navodi u tekstu sadrži više od 40 reči ne koriste se znaci navoda, ne- go se citat piše u posebnom bloku.

primer:

Vigotski (1996) značenje izraza „socijalno“ takođe određuje svojstveno sebi:

Reč socijalno primenjena na naš predmet je od velikog značaja. Pre svega, u najširem značenju ona označuje da je sve kulturno-socijalno. Kultura i jeste produkt socijalnog života i društvene delatnosti čoveka i zato nas već samo postavljanje problema kul- turnog razvoja ponašanja neposredno uvodi u socijalni plan razvoja. Dalje, moglo bi se ukazati na to da je znak koji se nalazi van organizma, kao i oruđe, odvojen od ličnosti i u stvari služi kao društveni organ ili socijalno sredstvo (str. 114).

Pravilo: Rad sa dva autora

Između prezimena autora se ubacuje znak &:

primer:

Tomas i Česova (1984) definišu temperament kao „kategorički termin bez ikakvih implikaci- ja u odnosu na etiologiju“ (str. 4).

Temperament se definiše i kao „kategorički termin bez ikakvih implikacija u odnosu na etio- logiju“ (Thomas & Chess, 1984, str. 4).

Pravilo: Rad sa 3-5 autora

Prilikom prvog navođenja takvog izvora navesti sve autore:

primer:

(Rokai, Đere, Pal, & Kasaš, 2002)

Kod kasnijih navođenja ovog izvora navesti samo prvog autora i dodati „i dr.“ ako je knjiga pisana na srpskom, ili ”et al.“, ako je knjiga pisana na stranom jeziku.

primer:

(Rokai i dr., 1982)

Pravilo: Rad sa 6 i više autora

Pri prvom i svakom daljem navođenju navesti samo prvog autora i dodati „i dr.“ ako je knjiga pisana na srpskom, ili ”et al.“, ako je knjiga pisana na stranom jeziku:

primer:
(Nikolić i dr., 2010)

Pravilo: Radovi udruženja, korporacija ili drugih organizacija

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primer:
prvo navođenje:
(Srpska akademija nauka i umetnosti [SANU], 1998)

kasnija navođenja:
(SANU, 1998)

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primer:
(Bogdanović, 2000, para. 5)
(Johnson, 2000, Conclusion section, para. 1)

Pravilo: Autori sa istim prezimenom

Kod autora sa istim prezimenom koriste se inicijali imena kako bi se izbegla konfuzija.

primer:
Istraživanje koje je sproveo N. Jovanović (2002) dovelo je do ...

Pravilo: Više referenci od istog autora

Ako postoje dve ili više referenci od istog autora iz iste godine onda se posle podatka o godi- ni dodaju slovne oznake „a", „b", itd.

primer:
(Torma, 2000a) (Torma, 2000b)

Pravilo: Dva ili više radova u jednom citatu

Kada se navode dva ili više radova, onda se u zagradi navode autori originalnih radova po redu objavljivanja i oni se razdvajaju tačkom-zapetom:

primer:
Interesantno je da drugi autori, opet, relativizmu suprotstavljaju realizam, naročito jedan nje- gov vid posebno popularan u epistemiologiji - konvergentni realizam (Sinđelić, 1988; Kirk, 1999).

Format APA stila

- Ovde su prikazani primeri korišćenja APA stila za citiranje u raznim oblicima pojavljivanja (knjiga, članak u časopisu, zbornik, ...). Prikazani su osnovni primeri i ne odgo- varaju svakoj mogućoj situaciji.

Knjige (štampani izvori)

- Knjiga sa jednim autorom

Prezime autora, inicijal(i) imena (godina izdanja). *Naslov dela*. Mesto izdanja: naziv izdavača.

primer:
Lukić, R. (2010). *Revizija u bankama*. Beograd: Centar za izdavačku delatnost Ekonomskog fakulteta u Beogradu.

-Knjiga sa više izdanja (ne navodi se ako ima samo jedno izdanje)

Prezime autora, inicijal(i) imena (godina izdanja). *Naslov dela* (br. izdanja). Mesto izdanja: naziv izdavača.

primer:
Lukić, R. (2010). *Revizija u bankama* (4. izd.). Beograd: Centar za izdavačku delatnost Eko- nomskog fakulteta u Beogradu.

- Knjiga sa više autora

Kada postoji više autora, svi se navode, s tim što se pre poslednjeg prezimena dodaje amper- send (&). Ako postoji više od sedam autora, navodi se prvih šest, zatim se pišu tri tačke, i na kraju podaci o poslednjem autoru.

Prezime autora, inicijal(i) imena, & prezime, inicijal(i) (godina izdanja). *Naslov dela*. Mesto izdanja: naziv izdavača.

primer:

dva autora:
Đorđević, S., & Mitić, M. (2000). *Diplomatsko i konzularno pravo*. Beograd: Službeni list SRJ.

četiri autora:
Rokai, P., Đere, Z., Pal, T., & Kasaš, A. (2002). *Istorija Mađara*. Beograd: Clio.

-Knjiga, prevod dela

Prezime autora, inicijal(i) imena (godina izdanja). *Naslov dela*. (Inicijal(i) imena prezime, prev.). Mesto izdanja: naziv izdavača.

primer:
Spic, E. H. (2011). *Umetnost i psiha: studija o psihoanalizi i estetici*. (A. Nikšić, prev.). Beo- grad: Clio.

-Knjiga sa urednikom ili priređivačem, zbornik radova

Ako je knjiga zbornik radova sa nekog naučnog skupa ili na neku odgovarajuću temu, kao autora navodi se priređivač tog dela i uz njegovo prezime i inicijal imena u zagradi se dodaje „ured.“ ako je urednik, ili „prir.“ ako je priređivač, ili pak ”Ed.“ kao editor ako je knjiga pi- sana na stranom jeziku.

Prezime autora, inicijal(i) imena (Ed.) (godina izdanja). *Naslov dela*. (Inicijal(i) imena prezi- me, prev.). Mesto izdanja: naziv izdavača.

primer:
Đurković, M. (ured.) (2007). *Srbija 2000-2006: država*, *društvo*, *privreda*. Beograd: Institut za evropske studije.

Članci u časopisima

-Članak iz zbornika

Prezime autora, inicijal(i) imena (godina izdanja). Naslov odeljka ili članka. U: Inicijal(i) imena Prezime, (priredio), *Naslov dela* (str. broj strana). Mesto izdanja: naziv izdavača.

primer:

Radović, Z. (2007). Donošenje ustava. U: Đurković, M. (ured.) (2007). *Srbija 2000-2006: država*, *društvo*, *privreda* (str. 27-38). Beograd: Institut za evropske studije.

-Članak iz naučnog časopisa

Prezime autora, inicijal(i) imena (godina izdanja). Naslov članka. *Naslov dela, godište,* opseg strana.

primer:

Đurić, S. (2010). Kontrola kvaliteta kvalitativnih istraživanja. *Sociološki pregled*, *44*, 485- 502.

-Članak iz magazina

Članak iz magazina ima isti format kao kad se opisuje članak iz naučnog časopisa samo što se dodaje podatak o mesecu (ako izlazi mesečno), i podatak o danu (ako izlazi nedeljno).

primer:

Bubnjević, S. (2009, decembar). Skriveni keltski tragovi. *National Geographic Srbija*, *38*, 110-117.

-Članak iz novina

Za prikaz ovih izvora treba dodati podatak o godini, mesecu i danu za dnevne i nedeljne no- vine. Takođe, koristiti „str." (ili "p." ako su novine na stranom jeziku) kod broja strana.

primer:
Mišić, M. (1. feb. 2012). Ju-Es stil smanjio gubitke. *Politika*, str. 11.

A ako se ne spominje autor članka:

primer:
Straževica gotova za dva meseca. (1. feb. 2012). *Politika*, str. 10.

Onlajn izvori

- **Napomena:**

Prema šestom izdanju uputstva za APA, kad god je moguće, treba upisivati DOI broj. DOI broj se upisuje na kraju opisa bez tačke.

- Ako DOI nije dostupan koristiti URL, ali ne treba upisivati datum pristupa sajtu, osim kod sajtova koji će se najverovatnije vremenom menjati (npr. wiki).

-Članak iz onlajn naučnog časopisa

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primer:
Stankov, S. (2006). Phylogenetic inference from homologous sequence data: minimum topo- logical assumption, strict mutational compatibility consensus tree as the ultimate solution. *Biology Direct*, *1*. doi:10.1186/1745-6150-1-5

Ako članak nema DOI broj možemo iskoristiti URL adresu:

primer:
Stankov, S. (2006). Phylogenetic inference from homologous sequence data: minimum topo- logical assumption, strict mutational compatibility consensus tree as the ultimate solution. *Biology Direct*, *1*. Preuzeto sa http://www.biology-direct.com/content/1/1/5

- E-knjige

Pri citiranju knjiga ili poglavlja iz knjiga koja su jedino dostupna onlajn umesto podatka o mestu izdavanja i izdavaču staviti podatak o elektronskom izvoru iz kog se preuzima:

primer:
Milone, E. F. & Wilson, W. J. F. (2008). *Solar system astrophysics: background science and the inner solar system* [SpringerLink version]. doi: 10.1007/978-0-387-73155-1

-Veb sajt

Podatak o godini se odnosi na datum kreiranja, datum kopirajta, ili datum poslednje promene.

Veb sajt kome se zna autor:

primer:
Kraizer, S. (2005). *Safe child*. Preuzeto 29. februara 2008, sa http://www.safechild.org/

Veb sajt kome se autor ne zna:

primer:
Penn State Myths. (2006). Preuzeto 6. decembra 2011, sa http://www.psu.edu/ur/about/myths.html

Veb sajt gde je autor korporacija ili organizacija:

primer:
Substance Abuse and Mental Health Services Administration (SAMHSA). (15. februar 2008).
Stop underage drinking. Preuzeto 29. februara 2008, sa http://www.stopalcoholabuse.gov

Strana unutar veb strane:

primer:
Global warming solutions. (2007, May 21). U: *Union of Concerned Scientists*. Preuzeto 29. februara 2008, sa http://www.ucsusa.org/global_warming /soultions

-Blog i wiki

Napomena: Viki (wiki) su strane koje svako može da uređuje i menja. Informacije koje nala- zimo na ovakvim sajtovima ne moraju biti pisane od strane eksperata.

blog:

primer:
Jeremiah, D. (2007, September 29). The right mindset for success in business and personal life [Web log message]. Preuzeto sa http://www.myrockcrawler.com

wiki:

primer:
Happiness. (n.d.). U: Psychwiki. Preuzeto 7. decembra 2009 sa http://www.psychwiki.com/wiki/Happiness

-Video post (YouTube, Vimeo, ...)

Za podatak o autoru se uzima prezime i ime autora (ako postoji taj podatak) ili ime koje je autor uzeo kao svoj alijas (obično se nalazi pored podatka „uploaded by" ili „from"):

primer:
Triplexity. (1. avgust 2009). Viruses as bionanotechnology (how a virus works) [video]. Preuzeto sa http://www.youtube.com/watch?v=MBIZI4s5NiE

Referensna strana

- Svi izvori koji su navedeni u toku teksta navode se na kraju rada u odeljku pod naslovom
„Literatura", ili „Korišćeni izvori". Ako postoje neki dodatni izvori koji nisu citirani u sa- mom radu, ali su poslužili pri pisanju rada, ili mogu da posluže za dalje izučavanje date teme, mogu biti navedeni u odeljku sa naslovom „Bibliografija" ili „Dodatna literatura".

Izgled i redosled

APA stil nalaže da naslovi sa referensne strane budu poređani tako da prva linija svakog unosa stoji do leve margine, a ostale linije da budu uvučene. Ova lista bi trebalo da ima dvostruki prored.

Reference treba da budu poređane po alfabetskom redosledu. Naslovi na stranim jezi- cima koji počinju sa određenim ili neodređenim članovima ("a", "the", "Die", ...) se ređaju kao da član ne postoji. Isto tako, ako neki naslov počinje brojem naslov piše se slovima.

- ***Izgled referensne strane: Literatura:***

Bubnjević, S. (2009, decembar). Skriveni keltski tragovi. *National Geographic Srbija, 38,* 110- 117.

Đorđević, S., & Mitić, M. (2000). *Diplomatsko i konzularno pravo*. Beograd: Službeni list SRJ.

Đurić, S. (2010). Kontrola kvaliteta kvalitativnih istraživanja. *Sociološki pregled, 44,* 485-502.

Đurković, M. (ured.) (2007). *Srbija 2000-2006: država, društvo, privreda*. Beograd: Institut za evropske studije.

Global warming solutions. (2007, May 21). U: *Union of Concerned Scientists*. Preuzeto 29. februara 2008, sa http://www.ucsusa.org/global_warming /soultions

Happiness. (n.d.). U: Psychwiki. Preuzeto 7. decembra 2009 sa http://www.psychwiki.com/wiki/Happiness

Jeremiah, D. (2007, September 29). The right mindset for success in business and personal life [Web log message]. Preuzeto sa http://www.myrockcrawler.com

Kraizer, S. (2005). *Safe child*. Preuzeto 29. februara 2008, sa http://www.safechild.org/

Lukić, R. (2010). *Revizija u bankama*. Beograd : Centar za izdavačku delatnost Ekonomskog fakulteta u Beogradu.

Milone, E. F. & Wilson, W. J. F. (2008). *Solar system astrophysics: background science and the inner solar system* [SpringerLink version]. doi: 10.1007/978-0-387-73155-1

Mišić, M. (2012, februar 1). Ju-Es stil smanjio gubitke. *Politika,* str. 11.

Radović, Z. (2007). Donošenje ustava. U: Đurković, M. (ured.) (2007). *Srbija 2000-2006: država, društvo, privreda* (str. 27-38). Beograd: Institut za evropske studije.

Рокаи, П., Ђере З., Пал Т., & Касаш А. (2002). *Историја Мађара*. Београд: Clio.

Penn State Myths. (2006). Preuzeto 6. decembra 2011, sa http://www.psu.edu/ur/about/myths.html

Spic, E. H. (2011). *Umetnost i psiha: studija o psihoanalizi i estetici*. (A. Nikšić, prev.). Beograd: Clio.

Stankov, S. (2006). Phylogenetic inference from homologous sequence data: minimum topolog- ical assumption, strict mutational compatibility consensus tree as the ultimate solution. *Biol- ogy Direct, 1*. doi:10.1186/1745-6150-1-5

Straževica gotova za dva meseca. (2012, februar 1). *Politika,* str. 10.

Substance Abuse and Mental Health Services Administration (SAMHSA). (15. februar 2008).

Stop underage drinking. Preuzeto 29. februara 2008, sa http://www.stopalcoholabuse.gov Triplexity. (1. avgust 2009). Viruses as bionanotechnology (how a virus works) [video]. Preuzet sa http://www.youtube.com/watch?v=MBIZI4s5NiE

INVITATION AND INSTRUCTIONS TO AUTHORS

We invite all interested authors to submit their papers related to areas of research in social sciences, provided that the same paper has never been published before in other journals. The time limit set for receiving the completed paper for the first issue is **April 1**, and for the second is **October 1.**

The papers to be published in the journal CIVITAS are limited in length from 10.000 to 20.000 characters written in Times New Roman (font) 12 pts., double spaced.

The text should be submitted as Word document (.doc).

The papers should be written in **English** or **Serbian**, with abstracts, key words and title both in **English** and **Serbian.** In case the paper is submitted by a foreign author only an abstract in English should be added.

The authors should submit their papers in electronic form via the internet page of the journal http://www.civitas.rs. When submitting, it is necessary to attach the Statement concerning originality of the work.

The publishing of the work is free of charge.

An author can publish only one paper per annum in the journal. Two positive reviews by anonymous reviewers and their references for publishing are required for the paper to be published.

The author will receive a copy of the journal in which his/her paper is published.

The editorial board of the journal reserves the right to adapt the text to unifying editing standards as well as accepted conventions of usage and orthography in the English and Serbian language.

FORM AND STYLE

All the papers submitted should begin by stating (in the left upper corner) **the last name and the first name** of the author in Times New Roman 12 pts. In the footnote introduced by an asterisk for every author his/her degree, institution where he/she works and address and contact data should be given in Times New Roman 10 pts.

The title of the paper in capital (upper-case) letters, in bold, should be written in the middle (Times New Roman 14 pts.)

Before the main body of the text a short **abstract** (summary) in length up to 8 lines should be given with **five key words** single spaced in font 10 pts.

The subtitles should be written to the left on the page in lower-case letters and must be marked with numbers (e.g. 1., 1.1, 1.2, 1.2.1). The paragraphs (1., 2. etc.) are separated from the preceding ones by a blank space, and the paragraphs (1.1, 1.2 etc) by a 6 pts space.

The text is to be written in Time New Roman 12 pts and should contain the aim of the work, methods applied, the results obtained and the conclusions. At the end after the conclusion **references** should be listed.

After the references list**, the title of the paper, a summary and key words** should be written in English, if the text is in Serbian, or in Serbian, if the text is in English. The title is in bold upper-case letters, Times New Roman 14 pts, the summary and key words in Times New Roman 10 pts.

In case the paper contains footnotes (elucidating remarks added to the text), these should be written single spaced in 10 pts font. The footnote *does not contain* the citation of sources, since in accordance with the *APA style* they are integral part of the text.

QUOTING AND REFERRING TO LITERATURE APA STYLE CITATIONS IN THE TEXT

According to APA style quoting is considered to be integral part of the text; the source is given in brackets containing the elements (the name of the author, year of publication and page number) separated by comma. The source is quoted at the end of the sentence in front of the period.

At the end of the text a **reference list** is given with the documentation regarding all the sources used, in alphabetical order by the author's last name.

RULE: **Single author**

a. If in a sentence one author is mentioned and his/her words are quoted, then the year of the publication is given in brackets and the page number after the sentence(s) quoted. (the sentence(s) is separated by quotation marks).

EXAMPLE:

Kripke (1972) makes a similar comment:" 'Possible worlds' are *stipulated,* not *discovered* by powerful telescopes" (p.267).

b. If in the sentence the author's name is not mentioned, then his/her surname together with the year of publication and page number is given in brackets at the end of the sentence. If the source is **paraphrased** or **summarized**, then it is not necessary to add the page number.

EXAMPLE

The internal structure is taken to be part not of the content of sentences but of the way in which such content is represented (Stalnaker,1984)

c. If the quotation contains more than 40 words, quotation marks are not used, but written as a separate paragraph.

EXAMPLE:

David Lewis in (1973) offers a vivid characterization of possible worlds in the following often quoted paragraph:

It is uncontroversially true that things might have been otherwise than they are. I believe, and so do you, that things could have been different in countless ways. But what does this mean? Ordinary language permits the paraphrase: there are many ways things could have been besides the way they actually are. On the face of it, this sentence is an existential quantification. It says that there exist many entities of certain description, to wit, "ways things could have been". I believe permissible paraphrases of what I believe; taking the paraphrase at its face value, I therefore believe in the existence of entities which might be called "ways things could have been". I prefer to call them "possible worlds".

RULE: **Two authors**

If the source quoted is in brackets insert the sign& between the names of authors. EXAMPLE:

Heim and Kratzer (1998) explain the notion 'type driven interpretation' as follows: "it's the semantic types of the daughter nodes that determine the procedure for calculating the meaning of the mother node" (p.44).

The notion of type driven interpretation may be explained as follows: "it's the semantic types of the daughter nodes that determine the procedure for calculating the meaning of the mother node" (Heim & Kratzer, 1998, p.44)

RULE: **3-5 authors**

When quoted for the first time the names of all the authors should be mentioned e.g. (Gazdar, Klein, Pullum & Sag, 1985)

Later it is sufficient to mention the name of the first one adding "et al." if the book is in English or "i dr." if the book is written in Serbian.

e.g. (Gazdar et al.,1985) (RULE: **6 or more authors**

It is sufficient to mention only the first author's name with "i dr." or "et al." added in any occurrence of the quotation.

EXAMPLE:

(Nikolić i dr., 2010)

RULE: **Works by associations, corporations or other organizations**

If the author of the work is some organization, then the name of the organization should be mentioned in brackets as the author of the work. If the organization has a well known acronym, then the acronym should be put in square brackets, after the full name of the organization in its first occurrence, after that only the acronym is used.(p.84)

EXAMPLE:

First occurrence:

(Srpska akademija nauka i umetnosti [SANU], 1998)
Thereafter: (SANU, 1998)

RULE: **Sources without page numbers**

When sources without pagination (e.g. some electronic sources) are quoted the number of paragraph is used or the subtitle of the section and the number of paragraph in that section:

EXAMPLE:

(Bogdanovic, 2000, para. 5)
(Johnson, 2000, Concluding section, para. 1) RULE: **Authors with the same surname**

If there are two authors having the same surname, then the initial of the given name is used to avoid confusion.

EXAMPLE:

The investigation carried out by N. Jovanovic (2002) showed….
RULE: **More than one work by the same author**

When more than one work by the same author published in the same year is quoted, letters "a" and "b" should be inserted after the year of publication.

EXAMPLE:

Hall, S. L. (1980a). *Attention deficit disorder*. Denver: Bald Mountain Press Hall, S. L. (1980b). *Taming your adolescent*. Detroit: Morrison Books

RULE: **Two or more works in the same quotation**

When two or more works by different authors are quoted in the same sentence, then the names of authors should be given in chronological order of publishing their works separated by a semicolon.

EXAMPLE:

It is interesting that other authors, again, oppose realism to relativism, especially one aspect of it that is especially popular in epistemology – convergent realism (Sinđelić, 1988; Kirk, 1999).

REFERENCES APA STYLE

Here we are giving examples of entries APA style for different form of publications (books, articles in journals, collections etc.) We are giving samples which may not be suitable for every situation.

BOOKS (PRINTED SOURCES)

Books by one author

The author's last name, initial(s), year of publication (in parentheses), the title of the book (italicized); place of publication, the name of the publisher

EXAMPLE:

Gould, S. J.(1985). *The flamingo's smile.* New York: W.W. Norton

BOOKS HAVING MORE THAN ONE EDITION (In case there is one edition this is omitted)

The author's last name, initial(s), year of publication (in parentheses), the title of the book (italicized, the number of edition)

EXAMPLE:

Haegeman, L. (1994). *Introduction to Government and Binding Theory* (2.ed.) Oxford: Blackwell..

BOOKS BY MORE THAN ONE AUTHOR

If there are more authors to the book, each name should be mentioned; in front of the last one an ampersand (&) should be inserted. If there are more than seven authors, the names of six should be written down, then three periods and after that the data concerning the last author.

The author's last name, initial(s) & the (second) author's last name, initial(s), year of publication (in parentheses), The title of the book (italicized); place of publication, publisher.

EXAMPLE:

Forst, M.L., & Blomquist, M. (1991). *Missing children: Rhetoric and Reality.* New York: Lexington Books

A book by four authors

EXAMPLE:

Gazdar, G., Klein, E., Pullum, G., & Sag, I. (1985). *Generalized Phrase Structure Grammar* . Oxford: Blackwell

A book, translated

The author's last name, initial(s), year of publication (in parentheses), the title of the book (italicized), initial(s) and the last name of the translator (in parentheses)

EXAMPLE:

Wittgenstein, L.(1961). *Tractatus Logico-Philosophicus.* (D.F. Pears and B.F. McGuiness transl.).London: Routledge & Kegan Paul

Books with an editor, collections, anthologies

If the book is a collection of works from some conference or an anthology concerning some subject, the editor's name of the collection is given adding (Ed.), in parentheses after the name, if the book is in English or in some other foreign language; (ured.) or (prir.) if the book is in Serbian.

The author's last name, initial(s), (Ed.), the year of publication (in parentheses), the title of the book (italicized), initial(s) and last name of the translator, the place of publication, publisher.

EXAMPLE:

Ostertag, G. (ed.) (1998). *Definite Descriptions.* Cambridge Mass.: MIT Press

ARTICLES IN JOURNALS

ARTICLES IN ANTHOLOGIES

The last name of the author, initial(s), year of publishing (in parentheses); the title of the article; IN: initial(s), the last name (Ed.), the title of the journal, anthology, volume etc.(italicized) page numbers (in parentheses); place of publishing; publisher.

EXAMPLE:

Freidin, R. (2001). Cyclicity and Minimalism. In: Epstein, S.D. and Hornstein, N., (eds.) (2001). *Working Minimalism* (pp. 95-127). Cambridge Mass.: MIT Press

Article from scientific journals

The last name of the author, initial(s), year of publishing (in parentheses), the title of the article, the name of the journal, volume number (italicized), page numbers.

EXAMPLE:

Kamp, H. (1971). Formal Properties of 'Now' *Theoria,* 37, 227-273.

Article from magazines and other periodicals

The description is the same as for an article from a scientific journal, except that a month is added if the publication is issued monthly or day if it is issued weekly.

EXAMPLE:

Langer, E.T. (1989, May). The mindset of Health. *Psychology Today*, 48, 1138-1241

Articles from newspapers

For the description of this type of source to the year and month, day should be added for daily and weekly newspapers, and p. in case of foreign language newspapers or str. For Serbian ones is to be used for page number.

EXAMPLE:

Noble, K. B. (1986, September 1). For ex-Hormel workers, no forgive and forget. *The New York Times*, p.A5

ELECTRONIC SOURCES

NOTE

According to the sixth edition of APA guidelines, whenever possible a DOI number should be written at the end of description without a period at the end.

If the DOI number is not available use URL, but without the date of access, except if it is likely that content of the site will change (e.g. wiki)

Article from on-line scientific journal

EXAMPLE:

Stankov, S. (2006). Phylogenetic inference from homologous sequence data: minimum topological assumption, strict mutational compatibility consensus tree as the ultimate solution. *Biology Direct, 1*. doi:10.1186/1745-6150-1-5

If DOI number is not available use ORL address.

EXAMPLE;

Stankov, S.(2006). Phylogenetic inference from homologous sequence data: minimum topological assumption, strict mutational compatibility consensus tree as the ultimate solution. *Biology Direct, 1*. from http://www.biology-direct.com/content/1/1/5

E-books

When books or chapters of books are quoted from books available only on-line instead of the data about place of publishing and publisher the data about the electronic source from which the text is taken should be given.

EXAMPLE:

Milone, E.F. & Wilson,W.J.F. (2008). *Solar system astrophysics: background science and the inner solar system* [SpringerLink version]. Doi: 10.1007/978-0-387-73155-1

Web-site

The datum about the year refers to the date of creating, the date of copyright or to the date of the last change.

Web site with the author known

EXAMPLE:

Kraizer, S.(2005). *Safe child.* Retrieved February, 29, 2008 from http://www.safechild.org/

Web-site with unknown author

EXAMPLE:

Penn State Myths.(2006). Retrieved December 6, 2011, from http://www.psu.edu/ur/about/myths.html

Web-site whose author is a corporation or organization

EXAMPLE:

Substance Abuse and Mental Health Services Administration (SAMHSA). (February 15, 2008). *Stop underage drinking.* Retrieved February 29, 2008, from http://www. Stopalcoholabuse.gov

Page within web-page

EXAMPLE:

Global warming solutions. (2007, May 21) IN: *Union of Concerned Scientist.* Retrived February 29, 2008 from http://www.ucsusa.org/global_warming/solutions

Blog and wiki

Note: Wiki are pages which anybody can change and edit. Information got from such sites are not necessarily written by experts.

Blog

EXAMPLE:

Jeremiah,D. (2007, September 29). The right mindset for success in business and personal life [Web log message]. Retrieved from http://www.myrockcrawler.com

Wiki

EXAMPLE:

Happiness. (n.d.). IN: Psychwiki. Retrieved December 7, 2009 from http://www.psychwiki.com/wiki/Happiness

Video post (YouTube,Vimeo,…)

Concerning the author, his/her name and last name or the alias is taken, if there is such data (it can usually be found next to "uploaded by" or "from" phrases)

EXAMPLE:

Triplexity.(August 1,2009)> Viruses as bionanotechnology (how a virus works) [video]. Retrieved from http://www.youtube.com/watch?v=MBIZI4s5NiE

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This way of sourcing is useful when different editions of the text or different translations are compared. The second example of traditional way of quoting is the Bible. Exceptions are, moreover, well known reference books such as The Oxford English Dictionary, referred to as *O.E.D.,* The Greek- English Lexicon by Liddell and Scott, revised by Henry Stuart Jones and R. McKenzie, often referred to as *LSJ* (this work contains the list of all Greek authors and their works and gives the traditional abbreviations used in quoting) and many others.

There are, moreover, standard editions of collected works e.g. the collected works of I. Kant is referred to as A.A. (= Akademie Ausgabe) or the more popular one as Werkausgabe (by W. Weischedel), thus Werkausgabe III, is the first part of Kritik der Reinen Vernunft (Critique of Pure Reason) and as is well known there are two editions of this work the first from 1781 and the second from 1787 usually referred to as A and B, when this work is quoted the page number of the volume is given together with the original pagination; thus Werkausgabe iii, 138 [B 135,136. These are but a few exceptions to APA style documentation, where the traditional way of sourcing is preferred to the modern one by renowned authors.

To the editor: if you find this unimportant or uninteresting or have some solutions to these exceptions, please ignore this note.

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