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ABOUT THE LEGAL RESPONSIBILITY OF THE CENTRAL BANK IN MONETARY LAW

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Abstract

The subject of the analysis in this paper is to identify and evaluate the concept of central bank legal responsibility in the contemporary monetary law. In this regard, the research focuses on issues related to the need of clarifying and defining the nature, type and extent of central bank liability and compensation mechanisms for damage that may be caused to third parties in the implementation of the transferred lex monetae in practice. The first part of the paper focuses on the axiological and dogmatic analyses of the legal framework of the central bank, which is governed by the national monetary legislation sui generis, and the interpretation of different legislative solutions in the practice of comparative monetary law in the area of responsibility and legal protection of the central bank. The subject of special interest of the authors is the monetary-legal analysis of the relevant provisions of the Law on the National Bank of Serbia, since in their opinion, a clear determination of the responsibility of the supreme monetary institution is a precondition for its credibility, not only in national but also in the international monetary order, and a conditio sine qua non of creating a reputable and consistent national monetary jurisdiction.

Key words: central bank, monetary law, legal liability, lex monetae, monetary legislation, monetary jurisdiction.

О ПРАВНОЈ ОДГОВОРНОСТИ ЦЕНТРАЛНЕ БАНКЕ У МОНЕТАРНОМ ПРАВУ

Апстракт

Предмет анализе у овом раду јесте идентификовање, анализа и оцена концепта правне одговорности централне банке у савременом монетарном праву. У том смислу се у истраживању акценат ставља на питања која се тичу потребе за јасним дефинисањем природе, врсте и степена одговорности централне банке и начина надокнаде евентуалне штете која може бити проузрокована трећим лицима приликом имплементације трансферисаног lex monetae у пракси. У првом делу рада пажња се посвећује аксиолошкој и догматској анализи правног оквира деловања централне банке који се уређује националном монетарном легислативом sui generis и тумачењу различитих законодавних решења у пракси упоредног монетарног права у делу

одговорности и правне заштите централне банке. У даљем тексту, предмет нарочитог интересовања аутора јесте монетарноправна анализа меродавних одредаба Закона о Народној банци Србије, јер је према њиховом мишљењу, јасно одређивање одговорности врховне монетарне институције предуслов њеног кредибилитета, не само у националном, већ и у међународном монетарном поретку, као и conditio sine qua non стварања угледне и конзистентне националне монетарне јурисдикције.

Кључне речи: централна банка, монетарно право, правна одговорност, lex monetae, монетарна легислатива, монетарна јурисдикција.

INTRODUCTION

Until the late 17th century, the notion of the central bank had an ambiguous meaning, and there was no clear definition about the central bank functions. Central banks, as we perceive them today in monetary law, were constituted and formed during the 19thcentury. Certain central banks had started their development in the private sector, acting as neutral clearing houses for the already existing commercial banks (Arner, Panton, Lejot, 2010, pp. 2-3). The first central banks did not perform the functions and tasks that are today regarded as their constants in contemporary monetary law, but rather resembled special state bodies, without institutional and any other autonomy (Goodhart, 1991, p. 10). Today's central banks are most often organized as (*quasi*) government agencies, rarely as privately owned institutions, although combinations of these regimes can be possible in practice. The evolution of central banks, from the emergence of the first central banks (in the *UK*, *France* and *Sweden*), to the establishment of the European Central Bank (ECB) as a complex supranational monetary institution, has taken almost five centuries. In this respect, we can clearly see the development path of central banks law and the development of their microeconomic and macroeconomic functions, which demonstrate the necessity of their existence. It is important to point out that the final status formation of central banks was preceded by the global recognition of the central bank institution as an independent currency guardian, both in academia and among political entities (Smits, 1997, p.153). According to this concept, all issues related to the use of money should be handled by an independent institution, which in its work would be limited only by the concept of democratic legitimacy, the obligation to submit reports, to consult with various political bodies beforehand and to perform public tasks displaced from the sphere of everyday political processes (but normatively very clearly regulated). The positive monetary law, *ratione materiae*, includes the discipline of the central bank law, the commercial bank law (banking law) and the monetary law, which refers to governing

the issue of defining a monetary unit and determining the legal tenders for issuing money (Aufucht, Evensen, 1976, pp. 1-10).[1]

The theses on the existence of the so-called free banking in which healthy competition between commercial banks would result in the desired monetary qualitative leap, is not sustainable considering that the central bank, as a non-profit institution, establishes control in the banking and monetary systems as a whole. *We are of the opinion* that the formation and operation of the European Economic and Monetary Union (EMU) was, and has been, crucial for the further divergence of central bank law, notwithstanding the institutional crisis and the obvious asymmetry between the weak general economic policy and centralized monetary policy. The EU monetary law is highly developed and it is the benchmark of the national monetary legislation of Member States, as well as countries on the path to European integration (and the Union's foreign trade partners, too) who must be aware of it because of the monetary elements of foreign trade cooperation. Given the fact that the central bank is the basic subject of monetary law, it is clear that the central bank enjoys a special legal status in the national legal order. However, for the reasons of legal certainty, its creativity in the creation, implementation, derogation and abrogation of monetary legal norms (as well as the general financial norms that it creates with the acquisition of new competencies in the field of financial stability) must be placed under adequate scrutiny, implying that there are such controversial and insufficiently explored question in literature dealing with the issue of legal liability for the damage it may cause in its work.

PILLARS OF CENTRAL BANK GOVERNANCE AS PREREQUISITE FOR DEFINING LEGAL RESPONSIBILITY

In the monetary law literature, the central bank governance is viewed as a heterogeneous concept of the principles of independence, accountability and transparency, which is in the function of creating an optimal basis for the work of the central bank pertaining to legal regulation (Goodhart, 1991, p.6). In defining the concept of responsibility in the work of the central bank, it is important to note that the above mentioned principles stand in close synthetic-dialectical connection and should not be viewed in an isolated plane since the positive and negative correlations of their connectedness can be the cause of irregularities in the work and therefore causing damage. The positive and negative correlations can be expressed in a different degree depending the type of acts that a bank

[1] However, in some monetary jurisdictions, there has been an integration of the first and third substantive discipline, and so the central banks' law regulates the basic monetary issues.

makes and a different understanding and interpretation in practice which can be a consequence of making decisions on regular or extraordinary occasions. *We believe* that in this context it is particularly important to emphasize that the ban on soft budgeting, i.e. the monetization of the public debt (which is established by almost all monetary legislation in the world) can have significant consequences to the question of the central bank responsibility. However, when this damage is caused by gross negligence of employees, the potential damage in monetizing debt is reflected in the fact that diverting the central bank policy from its main task (monetary stability) and insisting on government debt lending has its opportunity cost (harm), because the central bank could effectively use that time to work in order to ensure the monetary stability that has the character of pure public good.

The optimal management of the central bank must be based on the following principles: defining price stability as the primary objective of the monetary policy to reduce direct lending to government debt; ensuring full functional independence for establishing foreign exchange policy; non-interference of executive authorities (direct or indirect) in the selection of foreign exchange policy measures and instruments; the creation of normative conditions in which responsibility in work corresponds to the degree of the independence of the bank and; providing by-laws that enable transparency to match the degree of the achieved accountability while deepening the financial market (Scheller, 2006, pp. 238-244). The competence of the central bank is not definitively defined and it must be viewed in real terms, beyond the current legal solutions, and shaped in the manner that always leaves sufficient room for maneuvering in order to acquire certain new competencies necessary for monetary crisis stabilization. Within its regulatory powers, the central bank can adopt different types of legal acts. According to their effect and territorial scope, we can classify them into acts that have the *general legal effect* and acts with *internal effect*. The law created and enforced by the central bank is softer than the hard law in its nature. However, in the context of the global economic and financial crises, its legislative competence has been given a coherent dimension (most notably in the ECB's example), as confirmed by the ECJ in the outright monetary transaction (OMT) case judgment. Given the fact that monetary laws, to a certain extent, can also respect economic logic, the central bank indeed seeks to create optimal legal conditions by exercising its statutory powers to achieve a high degree of independence, accountability, transparency and democratic legitimacy. Due to the effects of the Euro crisis, many central banks have begun to play the role of the last bank resort. By this concept the central bank grants loans to all institutions with liquidity problems (i.e. the ability to settle their due financial obligations), but under certain conditions: the financial support is (usually) intended for banks to regulate their solvency; the financial support is not time-limited or sum-limited, and the support lasts for as long as it is justified. However,

certain penalties in terms of default interest may be collected in certain cases, and these include the central bank requests to deposit certain types of pledges from commercial banks and discretionary assessment of credit (non) approval in case-specific assessments (Steinbach, 2016, p. 364).

The effective implementation of monetary law is not possible without the central bank's independent position and the non-intervention of the executive in its field of work (Gleson, 2019, p.72). However, this should not be understood in the light of the existence of an absolute ban on the central bank's communication with other institutions and cooperation with other national banks since it is not prohibited and harmful in all circumstances, but rather, desirable and useful in balancing the values, tasks and functions of the monetary policies of its members. It can be noted that although these are primary law norms that have an imperative character (*ius cogens*), states (governments) often behave as if they were the dispositive norms that best reflect the consequences of the global financial crisis that imposed different ECB reactions for the survival of the monetary union. Moreover, the establishment of cooperation between central banks in international monetary law is necessary for the realization of international stability. Such co-operation may, in practice, take the form of: information exchange (which is established by special agreements between central banks, laying down the conditions for such exchange of standardized concepts with the purpose of filling in the gaps in the information exchange process); dialogues and exchanges of views on monetary goals; exchanges of impressions and beliefs about economic development, and; standardized techniques for the exchange of data in their area of competence (which is important for mutual comparisons and joint actions). Of course, it is best for central banks to cumulate these forms of cooperation in practice because that way they become aware of the need to develop new forms of cooperation that will enable their tasks to be fulfilled in an optimal way. Although, *we fundamentally agree* with the view that the central bank must also have the aforementioned powers, it is essential that a restrictive approach is applied in the implementation of these new powers and that this function remains only secondary. The potential negative consequences of extensively practiced rescuing powers would be reflected in *moral hazard*, i.e. such behavior by the governments that would knowingly risk deviating from the criteria set out in the monetary strategy and failing to respect fiscal rules as constitutional and legal constraints on public debt by counting in advance on the bail-out.[2]

The relations between the government and the central bank have historically been the subject of much controversy, primarily in the segment

[2] The consequences of such moral hazard could overflow and threaten to undermine the global monetary order protected by international monetary law.

of state-owned banking, separate legal personality and work independence (Conti-Brown, Lastra, 2018, p.187). However, in all constitutional texts, only the institutional (not functional independence) of the central bank is affirmed, but in the future *functional independence* must also be explicitly established by an act of the highest legal force (Goodhart, 2005, pp. 206-215). The main argument refers to the need of reducing the influence of the political factors in meeting the public needs of citizens, but at the same time, the central bank's contribution to the previously established goals in the field of public services. A further argument relates to the fact that all laws in one country are created by the legislative and executive branches, but a potential problem may arise when the executive branch takes dominance over the legislative, so a legal imperative is posed by a broad-based judicial authority that strikes a balance between these forms of government. Functional independence is also necessary because the central bank evolves in the context of globalized economic flows (and thus contributes to maintaining financial stability), so the central bank can be seen as a separate fiscal agent. Although the number of goals for which central banks have competencies is complicated, *we cannot say* that there are competitive relations between them and there is no place for any trade-off, because, *in our view*, there is, a complementarity ratio, not an exclusivity ratio between them.

The dominant position of the central bank in national monetary law was particularly confirmed during the 1970's and 1980's, when the dominant monetary theory advocated a greater degree of national monetary policy orientation in pursuing international price stability. Such monetary doctrine was based on *three basic postulates*: the existence of a natural rate of unemployment; adjusting the nominal exchange rate to the national purchasing parity with a stable relationship between the desired growth in monetary demand and national income (Goodhart, 1995, p. 213). The central bank appears largely as a politically independent institution whose work is subject to the concept of democratic accountability. Liability is interpreted in a broad sense and refers not only to the issue of the central bank's mandate, but also to the specific actions it assumes to achieve the objectives of the single monetary policy. In the monetary law literature, it is emphasized that the responsibility has *three dimensions*: deciding to define the goals of the common monetary policy and their hierarchy, announcing the actual monetary policy, and determining the final responsibility for monetary policy actions (Haan, 2010, pp. 119-120). Taking into account the concept of democratic legitimacy according to which the power of all state-political institutions originates and returns to the citizens, a distinction can be made between the so-called *input (procedural) legitimacy* and *output legitimacy* (Scheller, 2006, p.127). The procedural legitimacy exists when entities make decisions based on the powers delegated by citizens, while the legitimacy of the results is assessed in relation to the fact that the

elected mandates have fulfilled their expectations and needs. According to this theoretical assumption, the central bank enjoys the procedural legitimacy, which results from the delegation of monetary sovereignty from the state to the supranational level of government. It is noticeable that the independence and responsibility of the central bank cannot be analyzed *per se* because they represent the conditions that must be cumulatively fulfilled. Based on the above, we can see that it is necessary to establish a *certain balance* in the requirements for independence and accountability, since the central bank must prevent events in which subjects and actions of monetary policy might become the object of interests to the entities and the operation of fiscal policy instruments (Hazel, 1997, p. 59).

In contemporary monetary law, the relationship between the central bank and the government cannot be reduced to a simple rethinking of its independence, since in practice it is much more (Lastra, 2015, p. 401). Throughout history, central banks have built a specific (*we would say*) two-way freight business in their dealings with the government in which the government is expected to fully fulfill its pre-emptive requirements, while the central bank is expected to fulfill certain prestations by allowing the government a privileged position, which in fact means lending to its debts. When it comes to the relationship between independence, accountability and transparency in the work of central banks, empirical research shows that there is a high degree of correlation between the degree of transparency and accountability (Laurens, 2009, p.171). Namely, if the central bank shows a high degree of responsibility in its work, it implies a high level of transparency as well. Accountability is primarily seen as the presence of clearly defined goals that a bank wants to achieve, while transparency stands for the public disclosure and publication of macroeconomic considerations that determine a particular type of monetary policy. It is quite logical that clearly defined goals allow the central bank to communicate detailed information on monetary strategy, medium-term outcomes, as well as the adopted mathematical models and assumptions. Although, at first glance, it may seem that the developed and complex economic system includes a high degree of accountability at work (which would be a feature of developed economies), and the low level of transparency and low degree of accountability at work would revolve as features of underdeveloped countries, it may not always be so.[3]

We believe that transparency must also raise the question of its real reach (scope), because monetary laws are not *lex certa* (they are not written in a style that all citizens can understand, and thus make it even

[3] Such discrepancy, according to some IMF studies, is due to the fact that the degree of transparency can be relatively easily increased by issuing more publications on the central bank work, while increasing accountability in the work requires a change in the central bank legislation, which is a more complex process.

harder to understand the by-laws and secondary law acts that the central bank adopts). The requirement for clarity and precision in monetary laws must suffer (justifiable) limitations, and therefore monetary regulation is not codified in any monetary jurisdiction. Such codification would be so difficult to achieve (from a legal and technical standpoint) and would be very complex for implementation due to its extraterritorial monetary effects. In order to understand monetary regulation, it is necessary to adopt specialized legal knowledge that only a limited number of lawyers possess, so transparency (in an effective sense) can only be achieved by the dissemination of monetary law discipline through the scientific and professional public, and not by the general public (or at least not in terms of the same quality as previously mentioned).

MONETARY LAW ARRANGEMENTS FOR CENTRAL BANK LEGAL RESPONSIBILITY AND PROTECTION: AN OVERVIEW

When we talk about the legal responsibility of the central bank, we must point out certain similarities in the work of central banks and supreme courts. Specifically, there are certain *evolutionary links* in the development of the judiciary and central banking that are best reflected in the fact that the government entrusts the authority to exercise the most important monetary and judicial powers to these institutions whose members it appoints, but they must act in favor of the internal affairs of the entire society, although they are not their direct elect (Goodhart, Meade, 2004, p. 5). Although their constitutional position is similar, there are no *a priori* reasons to expect that supreme court decisions will have many elements in common with monetary policy decisions, but we must bear in mind that monetary policy is not governed *per se*, but by adequate legal regulations.

In the monetary law literature, with respect to central bank accountability, a distinction is made between a regime of *fault liability* and *no fault liability*, where, despite the absence of a subjective element, there is liability for the consequences (Dijkstra, 2012, p. 344). The responsibility of the central bank can be caused by negligence or gross negligence (intentionally) when the act of the bank is not in accordance with "good faith", which is definitely expected on the part of such an institution. Also, in terms of the type of liability, the distinction is made between the *responsibility for conducting monetary policy, responsibility for financial supervision and responsibility for resolution measures*. The tripartite polarization of responsibilities is conditioned by the evolution of the central bank roles, which in the context of the global financial crisis, begin to perform some new functions. The issue of legal liability is further complicated by the fact that central banks are also receiving some new tasks in the field of money laundering counter-actions, counter-terrorism

financing, and issues of regulating digital currencies. Also, the central bank has a significant role in the legal framing of the banking risk management (Jovanović, Zattila, 2018, p.142).When it comes to the central bank legal responsibility, most national legal texts that regulate their establishment, jurisdiction and action today (in over 150 monetary jurisdictions monitored by the IMF) do not explicitly identify the *object of protection* against harmful activities of the central bank. The *tort liability clause* of the central bank is (generally) included in the monetary norms of the law, except in the case of the liability of the Chilean central bank where such liability is not regulated by law, but is prescribed by the constitution as an objective liability of the state decentralized agencies (Khan, 2018, pp. 15-26). The liability imposed by monetary laws is almost always narrowly limited in all monetary jurisdictions, and very often linked to the *immunity from liability* for particular categories of employees of the central bank. Most often, they are members of the board of governors who, for example, were abstinent in making potentially harmful decisions or implementing measures with such an effect on the economy and citizens. The necessity of supplementing and concretizing such provisions lies in the need to clearly define the nature and scope of liability, given that in some monetary jurisdictions tort liability is only determined by the central bank (but very often combined legal liability decisions are met). Although liability rules all civil servants, certain modifications exist in terms of the reasons for granting immunity from prosecution, which is quite expected given the fact that the central bank is an *actor primus* in establishing monetary order and the application of all monetary prerogatives found in the structure of monetary sovereignty, especially *lex cudenate monetae* (Dimitrijević, 2018, p. 41). The specific institutional status obliges all central bank employees to act in *de lege artis*, but that does not mean that there have been no cases of tort liability in monetary history. Prior to the outbreak of the debt crisis (2008), the IMF's Department of Monetary and Capital Markets (IMF) collected significant data and reports that called for accountability of central bank employees on the territory of *Europe* and the *Asia-Pacific* region related to the exercise of the function of financial supervision, the implementation of certain directives and acts related to the prevention of money laundering. Most legal texts state that a member of the supervisory board would not be held liable for any damage incurred in the performance of their regular duties, except where such damage was intended to be incurred (with the employees' right being receive compensation in the case of discharge).

However, *we must point* out here that the legal provisions never distinguish between civil, administrative and criminal liability of central bank employees, nor establish specific sanctions for such liability. Exceptions are the central bank laws of the *Philippines*, *Dominican Republic*, *Lithuania* and *Ecuador*, which make a clear distinction between the types of mentioned liability. It should be noted that these are the monetary

jurisdictions whose impact in creating the international monetary order is (in practice) far weaker than the impact of monetary jurisdictions of highly developed countries, which indicates a high level of awareness of national monetary legislators, and an enviable level of monetary nomotechnics development that does not leave legal gaps in one such significant component of the supreme monetary institution responsibility. Similar ambiguities exist with regard to the categories of employees who enjoy immunity, since they are most often determined *en-general*, with some exceptions (the immunity of auditors, structural units or regional management). It is *our opinion* that this is actually a *legal standard* the content of which must be determined by the court in each case depending on the situational framework and social circumstances (which can potentially prolong the protection of the legal order). It is necessary to transform such standards over time into concrete monetary norms, i.e. legal articles where the *enumeration method* could indicate the categories of employees who enjoy protection and under what conditions it can be applied (justified) in practice. Such concretizations, *in our view*, would greatly contribute to the demystification of the employment status of central bank employees in the eyes of the general public and would show the readiness and unwavering determination of monetary legislators to contribute to the full realization of the principle of legal equality. Taking into account some bad examples from monetary history, namely the work of certain central banks and their gross misuse of powers, such enumeration finds its logical and ethical justification. This, of course, does not mean that direct liability for damages would apply only to the lower categories of employees, since higher liability implies deeper knowledge and compliance with legal norms (which is a condition for promotion in the service), greater caution and thoughtfulness in decision making event which have a macroeconomic effect. Excluding the responsibilities of senior central bank officials, hypothetically, could also lead to the emergence of a *moral hazard phenomenon*, a relationship of conscious deliberation that would be absolutely unacceptable in the context of monetary stability.

A major drawback of the central bank laws is the apparent lack of standards and accountability criteria, since in very few cases can we find defined liability caused by negligence, gross negligence or good faith. For example, central banking laws of *New Zealand*, *Mauritius* and *Seychelles* contain detailed descriptions of liability for damage caused by acting in good or bad faith, while laws on central banks of *Serbia*, *Croatia*, *Belgium* and *Honduras* prescribe negligence as a measure of liability (Ibid). Also, the *solatium* is explicitly established in a small number of monetary laws, which means that it remains subject to interpretation, which in practice can be problematic when applying the principle of substantive truth. It is interesting that in the monetary legislation of *New Zealand*, the obligation of compensation actually belongs to the government which decides on the proposal of the competent minister. The clear definition of the type of

sanction in the legal text leaves additional problems in the case law, however the exception is the law on the *Luxembourg central bank* which ultimately contains provisions for sanctions for employees in the event of breach of their responsibilities which are complementary to the *Luxembourg Criminal Code*. Up to now, the amount of fines imposed for the breach of the aforementioned provisions on central banks work has most often been set in the range of $7-700,000, while the duration of the sentences imposed has been set in the range of *three months* to *twenty years* (Ibid). Interestingly, in all monetary jurisdictions, a combination of personal and material executions is encountered, while only the *Seychelles* and *Ghanaian central bank law* determine that the court must make a choice in this case, indicating that it is a specific mechanism of accountability (Khan, 2017, p. 3).

AN EMPIRICAL EXAMPLE OF THE SERBIAN MONETARY LAW IN THE CONTEXT OF THE LEGAL PROTECTION OF THE CENTRAL BANK

When it comes to legal protection of the National Bank of Serbia, it should be noted that it has traditionally been limited to liability for damage that bank employees may cause through their work. Interestingly, the amendments to the National Bank's law, introduced 2010, in art. 86b, include a provision that forecloses the *objective liability* of the bank, its organs and employees and imposes the principle of *subjective liability*, which effectively prevents injured persons from receiving compensation for damage caused by the illegal acts of the central bank. On that occasion, the complainant pointed out that the constitutional rights of the potentially injured persons were seriously violated, which (if the said provision had remained in force) would have been obliged to prove the intention or extreme negligence for the damage which is contrary to the principle established in Article 35 of the Constitution of the Republic of Serbia. Interestingly, the earlier (2003) Law on the National Bank did not contain a provision that would regulate the liability of the National Bank for the damage arising from the performance of its operations, as amended by the new Law (2010), where for the first time it is deciduously established. *We believe* the legislator has shown a willingness to put the supreme monetary institution on the same responsibility pattern with other state agencies in the manner prescribed by the Obligations Law, which was a significant monetary-legal qualitative shift.

However, the way in which this liability was formulated shows a departure from the sense of the indemnity institution, since the mentioned Art. 86b provided that "*the National Bank of Serbia, the Governor, the Vice Governors and other employees shall not be held liable for damage arising in the course of their business unless it is proved that such damage was caused by intentional or gross negligence (par. 1); the employees referred*

to in this paragraph cannot be held liable even after termination of their employment with the National Bank of Serbia, or termination of their function (par. 2), and that the National Bank of Serbia shall reimburse the costs of representation in court and administrative proceedings against employees." In considering the fact issues in this case, the Constitutional Court started from the fact that the National Bank represents a special republican body (*sui generis* body), that it has the status of a legal entity and so it can be the holder of rights and obligations in legal transactions. Its bodies do not have an independent and separate legal existence, and therefore no delinquent capacity, because they represent the constituent parts of the bank as a legal entity. From this fact, in the Court's view, it follows that the National Bank is liable for the damage caused by its organs by unlawful or irregular work. It is also unambiguous from the court's decision that the National Bank's tort liability is based on the misconduct of its authorities, which may be manifested in the form of illegal or irregular work. In this regard, the Constitutional Court points out that in legal theory and jurisprudence the view prevails that unlawful work of an authority implies any act of an organ contrary to the law, i.e. regulations made on the basis of the law (including the failure to apply the law), and as malfunctioning of an authority means any misconduct by an authority that is contrary to the certain standards of treatment of a legal entity in a given circumstance according to a certain pattern of treatment (the so-called "caring" entity), including actions contrary to the rules of profession. It is basically a *legal standard of expected behavior* (which is higher if it is a legal entity that has concrete legal powers). On the other hand, a single person who (as an organ or an employee), causes damage in the performance of the National Bank's operations cannot be held liable for civil liability, but may be subject to recourse.

In this manner, the Court emphasizes that everyone has the right to compensation for pecuniary or non-pecuniary damage caused by unlawful or irregular work by a governmental authority, a public authority holder, an autonomous province authority or a local government body where the National Bank cannot be an exception. Therefore, on the basis of the linguistic and purposeful interpretation of this constitutional provision, in the Court's view, it follows that the Constitution does not bind the aforementioned guarantee of the right to compensation in the aforementioned cases for the fulfillment of any other condition relating to the determination of the guilt degree which caused damage to third-party persons. On the other hand, the Constitutional court points out that the issue of direct liability of the members of individual bodies (employees of the National Bank towards third parties who have been harmed) should be viewed separately from the issue of liability of the National Bank as a legal entity. At the same time, the Court based its assessment on the fact that the impugned legal decision deviates from the principle that a legal person is

liable for damage caused by its organ to a third party in the exercise of its functions established by Art. 172 of the *Obligations Law*. It is the view of the Constitutional Court that the impugned standardization violates the principle of unity of the legal order, expressed in Article 4(1) of the Constitution, which requires mutual harmonization of all regulations and legal acts in order to protect both individual rights and interests, and the general public interest.

It is important to note that the Constitutional Court's decision was announced with some delay from the moment of its adoption, and that in the meantime a new *Law on Central Bank* (*2015*) was adopted in Parliament, in which the provision of Art. 86 (b) was audited in such a way that the National Bank is only liable for damage resulting from *non-performance in good faith*. Certainly, the aforementioned decision of the Constitutional Court and the amendments to the National Bank Law substantially contributed to the establishment of final positions on whether the central bank responsibility should be defined in an absolute, unlimited or objective manner with respect to domestic interests and comparative practice. Certainly, such a legal solution in the domestic monetary law is not lonely, since many comparative texts contain similar solutions, and *we believe* that it is in the function of strengthening the components of democratic legitimacy and the transparency of its work. The potential dissatisfaction with the current provisions on the responsibility of the National Bank should not reflect the understanding of the work of the central bank as a classical public administration body (because it certainly is not), and such a statement would imply a rude simplification and the negation of its importance in creating, developing and disseminating the spirit of monetary law over many centuries, the credible protection of monetary sovereignty and its contribution to the creation and maintenance of the international monetary system. The aforementioned legal solutions are not given *ad infinitum* and *pro futuro*, but with sufficient room for maneuvering to redefine them, given the constant evolution of the central bank's role in contemporary economy and law, which is particularly observed in the context of the globalization of economic and capital flows, as well as in the remediation of debt crisis consequences.

Nevertheless, the responsibility of the central bank is coextensive with its independent status (Golubović, 2018, p. 80). At the same time, we need to be aware that monetary policy is not just an ordinary set of administrative activities that must be brought under judicial control in order to exercise and protect individual rights, but implies the use of complex techniques and models aimed at sustainable economic growth which judges usually do not understand. While it is clearly understood by jurists that laws must be effective, the fact is that the concept of efficiency still remains a little abstract today, as it is primarily determined by the mechanics of designing legal solutions which include a careful

selection of doctrinal and legal concepts, form, language, style, and luck in regaining the right of certain views (Mousmoti, 2019, p. 7). In the field of monetary law, as a *hybrid branch of law* with represented private and public interests, the requirement of normative efficiency is further complicated because of monetary legal norms' dialectical connection with economic law and the condition of economic efficiency.

CONCLUSION

The central bank is the main subject of the national monetary law, and as such the principal interpreter and addressee of all the components arising from monetary sovereignty delegated to it by the state. Its institutional *sui generis* position signifies that the central bank also emerges as the creator of its own law, which undoubtedly confirms the process of the disintegration of monetary law, in which the law of central banks is the first and oldest special legal discipline that has developed from it. Such a position of the central bank certainly does not mean that its work takes place outside the positive legal order, which also involves regulating the issue of legal (tort) liability for the cause of damage when performing activities within its scope. The legal regulation of such liability is a direct manifestation of its passive procedural legitimation and the increasing frequency of monetary disputes in which it participates. Although there are no uniform legal solutions regarding the nature and type of tort liability of the central bank and the mechanism of redress, *we must emphasize* that in all monetary jurisdictions there are legal solutions recognizing and concretizing such liability to a greater or lesser extent. *Our opinion is* that according to the new role of the central bank in the area of financial supervision and macroprudential policy, it is necessary to set transparent rules that will not violate the right to equal compensation for the caused damage and the consistent application of constitutional provisions. However, at the same time, it is important to explain that the central bank is an institution *sui generis* and that its officers act *de lege artis*, which does not mean that they are infallible.

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О ПРАВНОЈ ОДГОВОРНОСТИ ЦЕНТРАЛНЕ БАНКЕ У МОНЕТАРНОМ ПРАВУ

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Резиме

Централна банка јесте основни субјект монетарног права и, сходно томе, ужива посебан правни статус у националном правном поретку. Из разлога праве сигурности, њена креативност у стварању, примени, дерогацији и аброгацији монетарних норми мора бити постављена под адекватну контролу, што имплицира и контроверзно и у литератури недовољно обрађено питање одговорности за штету коју у свом раду може проузроковати. Менаџмент централне банке посматра се као хетерегони концепт принципа независности, јавности у раду и одговорности који се налази у функцији стварања оптималне основе за правно регулисање рада централне банке. У утврђивању концепта одговорности у раду централне банке, важно је напоменити да поменути принципи стоје у тесној синтетичко-дијалектичкој повезаности и да се не смеју посматрати у изолованој равни, јер заправо позитивне и негативе корелације различитог степена њихове повезености (која је изражена у другачијем степену зависно од врсте аката које банка доноси и другачијим поимањем у пракси, што јесте последица доношења одлука у редовним или ванредним приликама) могу бити узрок неправилности у раду и, самим тим, проузроковања потенцијалне штете.

У теорији монетарног права се у погледу одговорности централне банке прави дистинкција између режима скривљене одговорности и одговорности без кривице, где без обзира на одсуство субјективног елемента постоји одговорност због насталих последица. Одговорност централне банке може бити проузрокована нехатом или грубом непажњом (намерно), тј. непоступањем са „добром вером". Такође, у погледу врсте одговорности, праве се разлике између одговорности за вођење монетарне политике, финансијске супервизије и резолутних мера. Трипартитна поларизација одговорности условљена је еволуцијом улоге централне банке, која у условима током и након глобалне финансијске кризе почиње обављати и функцију финансијске супервизије. Проблематику правне одговорности додатно компликује чињеница да централне банке добијају и неке нове функције у области спречавања прања новца, сузбијања финансирања тероризма, као и питања регулисања дигиталних валута. Одредба о деликтној одговорности централне банке је, по правилу, укључена у монетарне норме закона и готово је у свим монетарним јурисдикцијама уско ограничена и повезана и са имунитетом од одговорности за поједине категорије запослених у централној банци. Иако се на одговорност запослених у централној банци примењују правила о одговорности која важе за све државне службенике, одређене модификације постоје у смислу разлога за давање имунитета од гоњења, што је сасвим очекивајуће узевши у обзир чињеницу да је централна банка actor primus у установљавању монетарног поретка и примени свих монетарних прерогатива који се налазе у структури монетарног суверенитета, посебно lex cudenate monetae.

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STATE LIABILITY FOR NON-PECUNIARY DAMAGES IN THE JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS [a]

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Abstract

Non-pecuniary damages are a form of just satisfaction that the ECtHR may award if a violation of protected rights is found. These damages can be claimed by individuals, groups of persons, non-governmental organizations and states, whereby the awarded amount must be distributed to individual victims. However, for the Court to award compensation for non-pecuniary damage, several requirements must be met. The Court has awarded compensation for non-pecuniary damage on several grounds, such as pain, stress, anxiety, frustration, embarrassment, humiliation, and loss of reputation. Unfortunately, the criteria for determining the amounts of compensation for moral damage are still not clear and precise, so they have been determined by the Court on an equitable basis, taking into account its case-law standards.

Key words: non-pecuniary damage, ECtHR, injured party, grounds for damages, amount of compensation.

ОДГОВОРНОСТ ДРЖАВА ЗА НЕМАТЕРИЈАЛНУ ШТЕТУ У ЈУРИСПРУДЕНЦИЈИ ЕВРОПСКОГ СУДА ЗА ЉУДСКА ПРАВА

Апстракт

Надокнада нематеријалне штете представља један облик правичног задовољења који ЕСЉП може досудити уколико установи кршење заштићених права. Ту надокнаду могу тражити појединци, групе лица, невладине организације и државе, с тим што државе добијени износ морају расподелити индивидуалним жртвама. Међутим, да би Суд досудио надокнаду нематеријалне штете, мора да буде испуњено неколико услова. Суд је досуђивао надокнаду нематеријалне штете по више основа, као што су бол, стрес, узнемиреност, фрустрација, осрамоћење, понижавање и губи-

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так угледа. Нажалост, још увек не постоје јасни и прецизни критеријуми за утврђивања износа одштета, тако да их је Суд одређивао на правичној основи, водећи рачуна о стандардима из своје праксе.

Кључне речи: нематеријална штета, ЕСЉП, оштећена страна, основи за одштету, износ надокнаде.

INTRODUCTION

According to Art. 41 of the European Convention of Human Rights (ECHR or Convention), "if the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party". *Raison d'être* of just satisfaction is "directly derived from the principles of public international law relating to State liability" (Cyprus v. Turkey, GC, Just Satisfaction, §40), and its aim is to put the injured person "in the same legal position as it would be if his/her Convention rights had not been violated" (Jakšić, 2006, pp. 465). Although Art. 41 did not specify the forms of just satisfaction, the European Court of Human Rights (ECtHR or Court) has awarded just satisfaction under the following three grounds: pecuniary damages, non-pecuniary damages, and the costs and expenses.

In this paper, the authors will only analyze compensation for non-pecuniary damage, as a form of just satisfaction. Non-pecuniary (moral, non-material) damage is harm to personal or immaterial goods, such as life, health, freedom, honor, reputation, etc., as well as damage to tangible goods, causing harm not only to these goods, but also to their owner or user (Radišić, 2018, pp. 220). Therefore, moral damages compensate injuries that are not economic in nature.

The principle of non-pecuniary damage compensation was established in the ECtHR's practice in the *Vagrancy* cases, but it was awarded for the first time in the case of *Ringeisen*. Since then, in its well established case-law, the Court has built the rules concerning subjects who may claim compensation for moral damage, requirements and grounds for awarding this type of damages, as well as the determination of its amount. These issues are the subject of the research hereinafter.

WHO MAY CLAIM REPARATION FOR NON-PECUNIARY DAMAGE?

Since the term "injured party" is a synonym for "victim" in the context of Art. 41 of the Convention (Dijk, Hoof, Rijn, & Zwaak, 2006, pp. 258), everyone entitled under the ECHR to lodge an application may also claim just satisfaction. Accordingly, the compensation for non-pecuniary damage arising from the infringement of the rights guaranteed by the Convention may be sought by individuals, groups of persons, non-governmental organizations, and states.

INDIVIDUALS AND GROUP OF PERSONS

Any person may bring an application against a State Party that has allegedly violated his/her right guaranteed by the ECHR, regardless of the person's nationality, place of residence or legal capacity (Zehentner v. Austria, §39). In most cases, applications are lodged and the compensation for moral damage is claimed by the direct victims of the violation of the Convention rights. Direct victims are directly and personally affected by acts or omissions of state authorities.

Non-pecuniary damages may also be claimed by indirect victims. These victims are personally affected by an infringement of another person's human rights. They are not directly impacted by a violation of their personal rights, rather they are indirectly affected by a violation of someone else's rights.[1] Indirect victims are very often close relatives, who experience suffering, worry, distress and discomfort, due to the direct victim's infringement. However, they do not automatically acquire the status of indirect victims nor the right to lodge an application with the ECtHR. These persons will have *locus standi* if their suffering outweighs what is usual or unavoidable when a family member is exposed to a breach of human rights (Orhan v. Turkey, §358).

The ECtHR allows relatives to seek compensation for moral damage when a direct victim has died prior to taking his/her case before this Court. A good example of this situation is the case of *Ramsahai*, where it accepted the joint application of the grandparents and father of the boy killed by the police. The Court found that the official investigation into the death of the boy had been inadequate, and thereby found a breach of Art. 2 of the ECHR. Because of such a violation, the ECtHR awarded the applicants jointly 20,000€ with respect to non-pecuniary damage.

The ECtHR also accepted applications of close relatives and awarded them non-pecuniary damages in the event of the disappearance of a person. The *Kurt* case may be quoted as an example. The application was brought by Mrs. Kurt, both on her own behalf and on behalf of her son, who had disappeared during a military operation of the Turkish forces. The Court found that, due to the disappearance of her son and the failure of the authorities to conduct an effective investigation into his disappearance, there was a violation of Art. 3, and thereby awarded the mother £10,000 for a non-pecuniary loss. The Court emphasized that in these situations, the violation of Art. 3 was not based on the mere act of a person's "disappearance", but rather on the authorities' non-response.[2]

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[1] In this situation the Court awards non-pecuniary damages not to the "injured party", but to the party who was allowed to pursue the application (Altwicker-Hámori, Altwicker & Peters, 2016, pp. 15).

[2] E.g., Utsayeva & Others v. Russia, §185.

Besides parents and children, the Court also awarded compensation to close relatives (Ibragimov and Others v. Russia), spouses (Utsayeva & others v. Russia), and even non-marital partners of the deceased direct victims.[3] In doing so, the ECtHR noted that for obtaining the status of indirect victim, it is not relevant whether the applicants were the heirs of the deceased (disappeared) person (Van Colle v. UK, §86).

The Court has also awarded compensation for moral damage to close relatives in cases where the deceased person was subject to torture (Keenan v. UK). On the other hand, ECtHR "has consistently rejected as inadmissible *ratione personae* applications lodged by the relatives of deceased persons in respect of alleged violations of rights other than those protected by Articles 2 and 3 of the Convention" (Gradinar v. Moldova, §91), as they belong to the category of non-transferable rights (Bic & Others v. Turkey, §22).

A specific situation exists when an applicant who has already lodged an application dies during the proceedings. The Strasbourg institutions pointed out that in such a situation the heirs of the deceased applicant did not have "a general right that the examination of an application should be continued".[4] In several cases, the Court rejected to continue the proceedings, justifying such a decision on the fact that the "application is closely linked to the person of the deceased applicant" (Franz Mathes v. Austria, §19). In contrast, in some other cases the ECtHR allowed the heirs to continue the proceedings and awarded them the compensation for moral damage claimed by the deceased applicant (X. v. France, §54).

Finally, non-pecuniary damages may also be claimed by a "group of individuals" made up of a number of people connected with a certain common interest. The ECtHR bundles such complaints in one case if applicants may demonstrate that they all have been affected by the same breach of the ECHR. For example, in the *Guerra* case, which was initiated by 40 citizens of the town Manfredonia, the Court found that due to the releasing of toxic substances from a chemical factory near the town, Art. 8 was infringed and awarded each applicant 10 million lira.

NON-GOVERNMENTAL ORGANIZATIONS

Non-pecuniary damages can also be claimed by non-governmental organizations. This term covers legal entities and only those of a private character, i.e. which do not exercise any governmental powers. A wide range of private organizations have submitted applications to the ECtHR and sought compensation for moral damage, such as companies, trade unions, churches, associations, newspapers, and political parties. In contrast,

[3] Velikova v. Bulgaria.
[4] E.g., Richard Kofler v. Italy, §16; Franz Mathes v. Austria, §18.

locus standi before ECtHR do not have the central organs of the State and decentralized authorities that exercise "public functions", regardless of their autonomy *vis-à-vis* the central organs; likewise, it applies to local and regional authorities (Radio France & Others v. France, §26).

There have been difficulties in accepting the right of legal persons, especially companies, to claim reparation for non-pecuniary losses. The ECtHR initially expressed doubts that commercial companies could suffer non-pecuniary damage (Manifattura FL v. Italy, §22), but later on it accepted such a possibility (Comingersoll S.A. v. Portugal, GC, §35).

STATES

Art. 33 empowers any State Party to refer to the ECtHR in case of an alleged breach of the Convention by another Contracting Party. There are two categories of applications lodged under this article. Firstly, a State may allege a violation of the Convention *in abstracto*, complaining about the general shortcomings in another State. In other types of inter-State complaints, the applicant State points out the concrete human rights violations of its own or foreign nationals.

Very few inter-State applications have been filed to date (only 24, 8 of which are still in process). The ECtHR has dealt with non-pecuniary damage in only 3 cases. The first case was *Ireland v. UK*, but without going into the merits of non-pecuniary damages since Ireland clarified that it did not seek any just satisfaction (§ 245).

In the case *Cyprus v. Turkey*, the Court essentially grappled with the issue of non-pecuniary damage in inter-State proceedings. In its judgment on the merits, the Court merely stated that "the issue of the possible application of Article 41 of the Convention was not ready for decision and postponed its consideration," while in the judgment adopted in 2014, for the first time in its history, it afforded the compensation for moral damage in inter-State disputes (Cyprus v. Turkey, GC, Just satisfaction). In that judgment, the ECtHR firstly examined the timeliness of the Cypriot claim for just satisfaction and concluded that it was not out of time (§23-30). The Court then examined whether the application of Art. 41 is possible in inter-State proceedings. Referring to the public international law principle expressing that States are obliged to make reparation for breaches of treaty obligations, the ECtHR stated that "Article 41 of the Convention does, as such, apply to inter-State cases" (§40-43). However, the Court added that just satisfaction can only be sought if proceedings are instituted in order to protect an individual's interests, while this is not possible in cases initiated for the protection of collective interests. If the Court awards just satisfaction in inter-State cases, it does not belong to a State, but to individual victims (§46).

In the said judgment, the ECtHR awarded Cyprus with lump sums of 30,000,000€ for non-pecuniary damage suffered by the surviving relatives of the 1,456 missing persons, and 60,000,000€ to the enclaved

residents of the Karpas peninsula. The Court indicated that these amounts should be distributed by the Cypriot Government to individual victims, under the supervision of the Committee of Ministers.

The ECtHR awarded non-pecuniary damage in inter-State disputes for the second time in the case *Georgia v. Russia*. In the main judgment, the ECtHR found that the Russian Federation had violated Art. 3, 5 and 13 of the ECHR and Art. 4 of the Protocol 4.[5] Thereafter, Georgia submitted a claim for just satisfaction and the Court decided that Russia must pay the sum of 10 million euros in respect of non-pecuniary damage suffered by a group of at least 1,500 Georgian nationals (Georgia v. Russia (I), GC, Just Satisfaction). Contrary to the case of *Cyprus v. Turkey*, this time the Court gave instructions to the applicant State on how to distribute the afforded lump sum. However, it should be noted that Turkey and Russia have not paid the sums ordered by the ECtHR yet.

REQUIREMENTS FOR AWARDING NON-PECUNIARY DAMAGES

According to Art. 41 of the Convention, Rule 60 of the Rules of Court and the case-law, compensation for non-pecuniary damage will be awarded if the following criteria are met:

1. the applicant submitted a claim;
2. the ECtHR found that there was a violation of the Convention or the Protocols thereto;
3. there is a causal link between the violation of the rights and the damage;
4. there is an injured party;
5. the respondent State legal system allows only partial reparation;
6. the ECtHR considers it necessary to afford non-pecuniary damages.

If the above-mentioned criteria are met, the ECtHR may award non-pecuniary damage. It can decide on this issue in the judgment on merits, i.e. at the same time as finding the breach of the ECHR. If the issue is not ready for a decision at that moment, the Court shall adjourn and resolve it in a separate judgment.

COMPENSATION CLAIM

The Court does not award reparation for non-pecuniary losses on its own motion, but only if the applicant submits such a claim (Rules of Court, Rule 60). The plaintiff must specify the requested amount, but does not

[5] The case concerned the expulsion of over 4,600 Georgian nationals from the territory of Russia in autumn 2006, some of whom were also detained and subjected to inhuman and degrading treatment.

have to provide any proof of the moral damage suffered (Gridin v. Russia, §20). If the applicant considers that they are the victim of multiple right violations, they may seek either separate amounts for each alleged violation or a single lump sum covering all the violations (Practice Direction, §15). That claim has to be made within the time limit set by the Court, otherwise it will be rejected. Thus, in deciding on non-pecuniary damage, the ECtHR generally respects the principle of *non ultra petita*.

However, in some situations, the Court departed from this principle. Therefore, it granted higher non-pecuniary damages than those requested by the applicant. For example, in the case of *Stradovnik v. Slovenia*, the Court awarded the applicant 6,400€, although he claimed only 5,000€ (§23, 25). Also, ECtHR compensated for moral damage when the claim was submitted after the given deadline (Davtian v. Georgia, §68–71).

In some cases, the ECtHR made awards of damages even though the applicant did not seek it at all. The Court did so when it found a violation of Art. 3, "since this right has an absolute character", but with the remark that such a decision was "exceptional" by character (Chember v. Russia, §77). The Court acted in a similar manner in the case of *Rusu v. Austria*, concerning the breach of Art. 5. Noting the "fundamental importance of that right," the ECtHR granted the applicant with 3,000€, although no claim for just satisfaction had been submitted (§62).

VIOLATION OF THE CONVENTION

A violation of one of the rights guaranteed by the Convention or its Protocols is *conditio sine qua non* for awarding non-pecuniary damages. Therefore, in order to obtain compensation, it is necessary that the Court establishes that the decision or measure taken by the conflicts with the Convention obligations. Therefore, compensation for moral damage is only awarded when there is state liability for the breaches of guaranteed rights (Jakšić, 2006, p. 470).

If the applicant invoked a violation of several rights, it is sufficient that the Court declares the violation of at least one of them (Enea v. Italy, §159). On the other hand, if the Court does not find a violation of any right, the claimant will not be entitled to redress. Certainly, non-pecuniary damages cannot be afforded to complaints declared inadmissible at the earlier stages of the proceedings (Schabas, 2016, p. 836).

CAUSAL LINK

In order to obtain moral damages, the plaintiff must demonstrate a clear causal link between the violation of rights and the harm suffered. In contrast, the Court is not satisfied by "a merely tenuous connection between the alleged violation and the damage, nor by mere speculation as to what might have been" (Practice Direction, §7).

In determining the causal link in violation of Art. 6, the Court does not take into account the so-called hypothetical causality. It is irrelevant for the ECtHR what the outcome of the procedure before the national authority would be if there had been no procedural failure in domestic proceedings. For example, in the case of *Kostovski v. the Netherlands*, the defendant State contested the existence of a sufficient causal link between the violation of Art. 6 (examinations of anonymous witnesses without the possibility of the accused to ask questions and challenge the witnesses' statements) and the applicant's conviction. The State claimed that the applicant would have been convicted in spite of the possibility of questioning the witnesses. However, the Court did not accept this argument, stating that "detention was the direct consequence of the establishment of his guilt, which was effected in a manner that did not comply with the requirements of Article 6" (§48).

INJURED PARTY

An injured party is a person whose guaranteed rights have been violated and who has suffered damage. The term "injured party" is similar to the term "victim" used in the Art. 34 of the Convention. In the context of Art. 41 "these two words must be considered as synonymous" (Vagrancy, Art. 50, §23), because every "injured party" is at the same time a "victim."

However, in the context of Art. 34, there was a difference between these terms, given that the existence of the Convention violation was conceivable even in the absence of prejudice to the applicant. "Harm was not seen as a prerequisite for a finding of a violation, while an injured party was a victim of an infringement who had suffered prejudice" (Ichim, 2015, pp. 70). That little difference between the two terms disappeared after Protocol 14 entered into force, introducing "significant disadvantage" as an additional admissibility criterion (Altwicker-Hámori et al., 2016, pp. 14). After that novelty, every applicant has to prove the significant harm suffered in order to pass the admissibility test.

PARTIAL REPARATION IN NATIONAL LAW

The ECtHR awards non-pecuniary damages merely if the liable State's legal system provides only a partial reparation to the injured party. On the basis of *argumentum a minore ad maius*, the same applies to a situation when the national law foresees no remedy for the suffered damages at all (Bydlinski, 2011, pp. 40). Therefore, in order to award damages for non-pecuniary losses, it is necessary that the internal law foresees incomplete non-pecuniary damages or foresees no remedy at all (Practice Direction, §1). This requirement is an expression of the principle of subsidiarity in the Strasbourg regime of reparation (Ichim, 2015, pp. 67).

However, if the injured person received the full compensation at the national level, the Court has no competence to afford any amount in

addition to this sum (Bydlinski, 2011, pp. 43). In other words, the Court cannot award just satisfaction which exceeds the full reparation for the damages suffered. It can be concluded that the European system of human rights protection does not recognize "punitive damages" aiming to punish responsible states and deter future violations of human rights, but only applies "compensatory damages" with the aim to compensate the actual worth of the damage suffered (Bydlinski, 2011, pp. 41).[6]

Regarding this condition, it is questionable whether the applicant must attempt to obtain compensation at the national level before seeking the ECtHR to award just satisfaction. Some respondent states argued that the applicant must exhaust all domestic remedies related not only to the initial application filed under Art. 34, but also to the applicant's compensation claim. In contrast, both the ECtHR[7] and scholars (Dijk at al., 2006 pp. 258; Ichim, 2015, pp. 69-70; Reid, 2004, pp. 547; Jakšić, 2006, pp. 470) consider that the local remedies exhaustion rule does not apply to just satisfaction claims, as this would impede the effective protection of human rights.

NECESSITY TO AFFORD NON-PECUNIARY DAMAGES

The ECHR does not guarantee victims the right to obtain redress. The award in respect of non-pecuniary loss is not an automatic consequence of the Court's finding that the protected right has been violated (Steiner, 2011, pp. 10), but the ECtHR enjoys "a certain discretion in the exercise of that power, as the adjective 'just' and the phrase 'if necessary' attest" (Comingersoll S.A. v Portugal, GC, §29) to that. In other words, there is no entitlement of a victim to the award of just satisfaction as their subjective right, but only as a possibility thereof (Ichim, 2015, pp. 176).

Therefore, even in situations where internal law allows only partial compensation, the Court will not always award moral damages to the injured party. It will do so only "if necessary". As the ECtHR explains, "the awarding of sums of money to applicants by way of just satisfaction is not one of the Court's main duties, but is incidental to its task of ensuring the observance by States of their obligations under the Convention" (Sylla v. the Netherlands, §72).

The ECtHR did not specify in its judgments when just satisfaction is necessary. Some scholars assert that the Court should define some clear and objective guidelines for applying the necessity principle (Ichim, 2015, pp. 76).

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[6] This was confirmed by the ECtHR itself, noting that Art. 41 of the Convention "does not provide a mechanism […]for imposing punitive sanctions on the respondent State" (Varnava and Others v. Turkey, §156).

[7] E.g., Vagrancy, Art. 50, §16; Philis v. Greece (No. 2), §59; Ramsahai and Others v. the Netherlands, §443.

GROUNDS FOR NON-PECUNIARY DAMAGE COMPENSATION

The Convention does not enumerate the reasons (grounds) on the basis of which the compensation for non-pecuniary damage may be awarded. In the absence of such a provision, it is left to the Court to decide the issue on a case-to-case basis. On the one hand, there are judgments in which the compensation for non-pecuniary damage was awarded without any closer explanation or with a very brief and lapidary reasoning. The Court found it sufficient only to state in these judgments "that the violation of human rights caused non-pecuniary damage to be compensated" (Kutić v. Croatia, §39), without mentioning the specific basis for compensation.

However, in most of the cases, the Court did find it necessary and useful to mention or list the reasons why it decided to award compensation for pecuniary damage. In these instances, it usually did not confine itself to just one basis, but cited two or more reasons, not acting in the same manner even then. One of the Court's formulations was that non-pecuniary damage was intended to make "reparation for the state of disasters, inconvenience and uncertainty resulting from the violation in question" (Comingersoll S.A. v Portugal, GC, §29; Arvanitaki-Roboti and Others v. Greece, §27). Elsewhere, the Court found that the applicant suffered "anguish and distress," "pain and mental distress" or "stress and frustration" (Katsiyeva & Others v. Russia, §173).

The Court has also defined compensation for non-pecuniary damage as "reparation for anxiety, inconvenience and uncertainty caused by the violation" (Driza v. Albania, §131). Reference has also been made to "helplessness and frustration," "powerlessness and frustration," "frustration and feeling of injustice" (Galich v. Russia, §43). Furthermore, the Court has held that the award for non-pecuniary damage may include elements in respect of the following: "psychological harm or trauma," "embarrassment and humiliation," "loss of reputation" and "loss of relationship" (Leach, 2005, pp. 404). Finally, the Court has identified situations where the applicant had concurrently "suffered trauma, whether physical or psychological, pain and suffering, distress, anxiety, frustration, feeling of injustice or humiliation, prolonged uncertainty, disruption to life, or real loss of opportunity" (Varnava & Others v. Turkey, §224).

However, in its jurisprudence so far, the Court has neither explained nor defined any of the aforementioned reasons for awarding non-pecuniary damage compensation. Due to the absence of definitions of the terms used, it is very difficult to systematize or classify the bases for this type of compensation. Yet, with a certain degree of simplification, and based on the criteria of their nature, they could be *grosso modo* divided into two large groups. The first would be the reasons which are mainly the result of a violation of the victim's bodily integrity due to a breach of the Convention. They are usually manifested in the form of pain or physical suffering, caused by bodily injury. The second, a far more numerous group

of grounds, are the consequences of the victim's mental integrity violations. Therefore, here, the matter is not about bodily harm, but rather a violation of mental health, honor, reputation and the dignity of the victim.

Nevertheless, it should be noted that it is not often possible to draw a clear distinction between the two groups of bases. The main reason for this is that the violation of bodily integrity, in addition to physical, also regularly causes psychological consequences, both in relation to the victim and to members of their immediate family or close relatives. On the other hand, this distinction can only be made with regard to individuals, i.e. natural persons as victims of the Convention violations.

With regard to legal persons, the situation is rather different. With these entities, the grounds for the award of non-pecuniary damages are of a different nature and mainly concern the violation of moral, business or political integrity of the persons concerned. However, initially, the Court doubted that legal persons could suffer non-pecuniary damage because they "cannot feel "anxiety" or "distress" like natural persons" (Altwicker-Hámori et al., 2016, pp. 15). Later on, the Court admitted that companies and other legal persons may suffer non-pecuniary damage. The Court held that "account should be taken of company's reputation, uncertainty in decision-planning, disruption in the management of the company [...] and lastly the anxiety and inconvenience caused to the members of management team" (Comingersoll SA v. Portugal, GC, §35). The Court even acknowledged that not only commercial companies, but also political parties and their members may suffer non-pecuniary damage. Thus, it awarded compensation for these damages in cases of prohibition of work and dissolution of political parties, due to the feeling of disappointment or frustration of the party members and its founders (Dicle on behalf of the Democratic Patry (DEP) v. Turkey, §78).

DETERMINING THE AMOUNT OF COMPENSATION

Pertaining to the compensation for non-pecuniary damage, a particular problem is the determination of its amount. There are no clear and precise criteria in the Convention or other documents of the Court for calculating the amount of compensation. In this respect, based on Art. 41 of the Convention, the Court enjoys a wide margin for appreciation (Ђајић, 2014, pp. 199-200). Therefore, it can be said that the determination of the amount of "compensation for non-pecuniary damage by the European Court of Human Rights is difficult to understand other than the subjective judgment of the moral values of the victim and the perpetrator of the injury" (Shelton, 2015, pp. 324).

The absence of firm criteria in determining the amount of compensation was explicitly acknowledged by the Court itself. According to the Practice Direction, "it is in the nature of non-pecuniary damage that it does not lend itself to precise calculation" (§14). The Court has pointed out several times that "non-pecuniary damage is the applicant's subjective

measure of distress he had endured because of the violation of his rights and by his nature is not amenable to proof" (Korchagin v. Russia, §25).

The second important standpoint in the Courts jurisprudence is that "respective domestic practice of assessing compensation for non-pecuniary damage is not building" (Kissling et al., 2011, pp. 622). Nevertheless, domestic case-law can have limited relevance to the question of non-pecuniary damage in proceedings before Court (Gault v. UK, §30). The calculation criteria of the domestic courts can "offer assistance but should not be considered as prevailing" or mandatory "criteria offered in the Court" (Kissling et al., 2011, pp. 623).

On the other hand, according to its Practice Direction, the Court makes its assessment of damage for non-pecuniary loss as "having regard to the standards which emerge from its case-law" (§14). "Although Anglo-American *stare decisis* doctrine does not govern the jurisprudence of the Court" (Altwicker-Hámori et al., 2016, pp. 21), it has a limited duty to follow its previous judgments when calculating the amount of non-pecuniary damage. In particular, "it must take into account in its assessment of the amounts already awarded in similar cases" (Arvanitaki-Roboti & Others v. Greece, GC, §32). The Court has recently started to set up tables or scales on past awards in respect of non-pecuniary damage, stating average sums, grouped on the basis of respondent States and violated rights" (Altwicker-Hámori et al., 2016, pp. 21). The problem is that the Court has not so far published any table or scale.

The respondent State and the applicant can reach an agreement on the amount of the compensation in respect of non-pecuniary damage. In that case, the agreed amount will be awarded by the Court. However, "an agreement by the Government with an applicant cannot be a model in other similar cases" (Segerstedt-Wiberg & Others v. Sweden, §125).

As pointed out in its Practice Direction, the Court "makes its assessment of damage for non-pecuniary loss [...] on an equitable basis" (§14). The principle of equity is the general and guiding principle in the prevailing number of cases. The basic element of equity is that the award in respect of the non-pecuniary damage "involves flexibility and an objective consideration of what is just, fair and reasonable in all circumstances of the case" (Al-Skeini & Others v. UK, §182).

Apart from these explicit or implicit general rules of assessment, there are a few concrete criteria for assessing damages for non-pecuniary loss. From an analysis of the case-law the following criteria may be identified: the seriousness of the violation of the Convention, the seriousness and duration of the injury, personal characteristics and conduct of the applicant, and economic circumstances in the applicant's country.

The first and most important criteria in the calculation of non-pecuniary damage is the seriousness of the Conventions violation. The level of seriousness can be explained by the "implicit hierarchy of

Convention rights according to their relative importance". The hierarchy of the rights, "starting with the right to life (Art.2) and the prohibition of torture (Art.3), may suggest their importance" (Altwicker-Hámori et al., 2016, pp. 18). The Court itself has referred to Art. 2 together with Art. 3, as it "enshrines one of the basic values of democratic societies making up the Council of Europe" (Al-Saadoon & Mufdbi v. UK, §118).

The second criteria for assessing damages for non-pecuniary loss are the seriousness and duration of the injury. The Court uses several formulations to qualify the injury as particularly serious. For example, the Court may state that the applicant must have sustained "exceptional" or "significant" harm (Mocanu & Others v. Romania, GC, §371) or that they must have suffered "considerably" or suffered "serious" pain (Dimitrov & Others v. Bulgaria, §174). In addition, the duration of the injury has a bearing on its seriousness. Examples for such extended injures are extended unlawful deprivation of liberty (Stork v. Germany, §34) or excessive length of criminal proceeding in a rape case (N.D. v. Slovenia, §127).

The Court also takes personal characteristics into account when calculating the amount of non-pecuniary damage. The Court has relied on the following characteristics: the age of the applicant (Kostovska v. FYR Macedonia, §60), the state of health of the applicant (Iatridis v. Greece, GC, §46) or the applicant's important judicial status (Zubko & Others v. Ukraine, §74). Furthermore, the Court also takes into consideration the applicant's behavior. "It may award less of the amount of compensation in case where the applicant bears some degree of responsibility for the actual damage" (Schabas, 2016, p. 837). The Court also may reduce the amount of non-pecuniary damage because of "contributory negligence" by the victim (Practice Direction, §2).

Finally, the sum awarded in respect of non-pecuniary damage depends on the economic circumstances in the applicant's country. States have different price levels and standards of living. Based on the criteria of the "local economic circumstances" (Basarba OOD v. Bulgaria, §26), the Court awarded different sums for non-pecuniary damage in similar cases.

CONCLUDING REMARKS

Art. 41 of the Convention allows victims of human rights violations to receive non-pecuniary damages as a form of just satisfaction. However, victims do not have the right to compensation, but only the right to seek it from the Court. It is the ECtHR that finally decides whether any compensation is necessary, enjoying broad discretion in that process. Unfortunately, up to now, the Court has not established any criteria for determining the necessity of compensation, so the award of non-pecuniary damage is left to the subjective assessment of the judges. There are no exact criteria for calculating the amount of compensation, thus they are

determined voluntarily on the basis of equity, taking into account the standards established in its case-law. The consequence of such treatment is an inconsistent and non-uniform jurisprudence of the ECtHR.

The purpose of awards on non-pecuniary damages has been limited to mere compensation for the losses caused to the applicant. The Court has adopted a compensatory approach to non-pecuniary damages as it is not intended to punish the Contracting Party responsible. The Court has considered it inappropriate to accept claims for "punitive," "aggravated" or "exemplary" damages, therefore showing its reluctance to open the "Pandora's box" for the possible spreading of punitive damages.

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ОДГОВОРНОСТ ДРЖАВА ЗА НЕМАТЕРИЈАЛНУ ШТЕТУ У ЈУРИСПРУДЕНЦИЈИ ЕВРОПСКОГ СУДА ЗА ЉУДСКА ПРАВА

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Резиме

Накнада нематеријалне (моралне, неимовинске) штете представља један од облика правичног задовољења из чл. 41 „Европске конвенције о људским правима". Одговорност држава за ову врсту штете, која иначе није изричито предвиђена у наведеном члану, установљена је кроз дугогодишњу и богату јуриспруденцију Европског суда за људска права. Том приликом Суд је изградио посебна правила која се тичу субјеката овлашћених да траже надокнаду нематеријалне штете, услова за досуђивање те врсте штете, основа за надокнаду и утврђивање висине њеног износа.

Нематеријалну одштету могу тражити појединци, групе лица, невладине организације и државе. У највећем броју случајева, надокнаду нематеријалне штете захтевају директне жртве кршења права из Конвенције, али то могу тражити и индиректне жртве које су погођене кршењем нечијих туђих права. Кад су у питању државе, њихова је обавеза да добијени износ расподеле индивидуалним жртвама.

Да би Суд досудио надокнаду нематеријалне штете, мора да буде испуњено неколико услова. Према слову Конвенције и Пословника Суда, као и постојећој јуриспруденцији, они се састоје у следећем: да је апликант поднео захтев; да је Суд утврдио постојање повреде Конвенције или протокола; да постоји узрочна веза између повреде права и настанка штете; да постоји оштећена страна; да правни систем тужене државе дозвољава само делимичну накнаду и да Суд сматра потребним да досуди нематеријалну одштету.

У Конвенцији нису енумеративно набројани основи због којих Суд може досудити надокнаду нематеријалне штете. У одсуству једне такве одредбе, остављено је да то питање у сваком конкретном случају решава сâм Суд. У досадашњој пракси Суд је досуђивао нематеријалну одштету по више основа, као што су бол, стрес, узнемиреност, фрустрација, осрамоћење, понижавање, разочараност, губитак угледа и изгледа или прекид везе.

Посебан проблем је тај што у Конвенцији и другим документима Суда не постоје јасни и прецизни критеријуми за израчунавање висине накнаде. Суд је до сада одређивао износ накнаде на правичној основи, водећи рачуна о стандардима из своје и националне праксе. Поред тога, узимао је у обзир и неке посебне критеријуме, као што су озбиљност кршења Конвенције, озбиљност и временско трајање повреде, личне особине и понашање подносиоца захтева и економске прилике у држави подносиоца захтева.

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CAUSAL UNCERTAINTY: ALTERNATIVE CAUSATION IN TORT LAW [a]

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Abstract

The causal link between the tortfeasor's unlawful act and the resulting damage is an essential element of tort liability. There are situations in tort law practice where singular damage has more than one potential cause, so it is important to determine which one is legally relevant. In those situations, it is hard for the claimant to identify the tortfeasor. Moreover, proving the causal link is difficult or almost impossible. On the contrary, the tortfeasor can successfully object that the damage cannot be attributed to him/her. European courts and doctrine have developed theories about alternative causation firstly by addressing asbestos litigation. This paper presents solutions from English, Belgian, French, German and Dutch tort law. Although they all strive for the same goal - fair compensation, the diversity of methods and outcomes is surprising. The end of the paper is devoted to the *Principles of European Tort Law* (PETL), where optimal suggestions on how to overcome causal uncertainty are presented.

Key words: tort, asbestos, cause, uncertainty, burden of proof.

АЛТЕРНАТИВНИ КАУЗАЛИТЕТ У ОДШТЕТНОМ ПРАВУ

Апстракт

Узрочна веза између штетникове противправне радње и штетне последице нужан је елемент деликтне одговорности. Пракса познаје ситуације када више потенцијалних узрока претходи једној штети, па је важно утврдити који од њих је правно релевантан. Тада оштећени тешко идентификује штетника, доказивање узрочне везе је тешко или немогуће, а штетник успешно приговара да му се штета не може приписати. Европски судови и доктрина развили су теорије о алтернативном каузалитету решавајући парнице поводом штета изазваних азбестом. У раду су приказана решења из енглеског, белгијског, француског, немачког и холандског одштетног пра-

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ва. Мада сва она теже истом циљу – правичној накнади, изненађује разноликост и метода и исхода. Закључак је посвећен *Принципима европског одштетног права* (PETL), где су изведени оптимални предлози како превазићи каузалну несигурност.

Кључне речи: накнада, азбест, узрочна веза, последице, доказивање.

INTRODUCTION

Causal uncertainty forms a serious obstacle in tort law in general. Europe-wide, asbestos-related litigation provided significant developments regarding causation. In asbestos liability, the causation is challenging since more than one possible cause is present. From a medical point of view, it is inherently impossible to attribute a definite cause of individual cancer. Usually there are multiple sources of exposure, such as the workplace, environment and exposure originating from the victim. Moreover, conflicting scientific theories make this problem even greater. The question of causal uncertainty due to multiple sources of exposure lies at the heart of all cases under review.

UNITED KINGDOM

Landmark cases deliberating on causal uncertainty originate from the UK practice. Mr Fairchild had worked for a number of different employers, all of whom had negligently exposed him to asbestos. He died from mesothelioma (fatal cancer), and his wife was suing the employers (*Fairchild v Glenhaven Funeral Services Ltd*, 2002, UKHL 22). The problem was that a single asbestos fiber, inhaled at any time, can trigger mesothelioma. Moreover, the risk increases with exposure. Since it may take over 30 years before symptoms become evident, it was impossible to point to any single employer. "It was one of them", but it was impossible to say which one. Under the normal causation test, none of them would be liable. To overcome this, The House of Lords held that the appropriate test in this situation was whether the defendant had materially increased the risk of harm for the plaintiff. Thus was born so-called *Fairchild* exception, a deviation from the standard "but for" causation test. The employers were jointly and severally liable to the plaintiff (amongst themselves they could redress for different contributions).

Another cornerstone asbestos case was Barker (*Barker v Corus (UK) plc*, 2006). What distinguishes this case from *Fairchild* is that some exposures were not within the control of the defendant, and some employers were bankrupt. House of Lords decided that, in cases where there had been successive negligent exposure, the liability should be apportioned between defendants: each employer would be proportionally liable according to his contribution.

Both in *Fairchild* and *Barker* there were multiple employers-tortfeasors. In Fairchild, joint and several liability was promulgated. In *Barker, the* court stepped back from the far-reaching principle and embraced the proportional liability instead, so each employer was liable only for a fraction of compensation. However, proportional liability was abandoned by the English policymakers who returned to the Fairchild rule. Section 3 of the Compensation Act 2006 provided that mesothelioma victims who, due to the current state of medical science, were unable to prove whether the disease was caused by the wrongful exposure caused by the defendant or another source, were nonetheless entitled to compensation in respect of the totality of the harm suffered.

The third landmark, the Sienkiewicz case (*Sienkiewicz v Greif*, 2011), was different because the victims did not work for multiple employers. Rather, the disease was either caused by workplace exposure or by the background risk coming from miniscule atmospheric asbestos concentration (wrongful employers' behavior versus the natural factor). The court ignored the environmental exposure. One question raised in *Sienkiewic*z is whether the liability for the mesothelioma requires that the defendant doubled the background risk. The UK Supreme Court held that the material risk increase is enough. This was unorthodox because traditional standard of proof in civil English courts is the preponderance of the evidence: a defendant is liable if the plaintiff succeeds in establishing that it is more likely than not that the defendant caused concrete harm (Wagner, 2013, pp. 324).

The exposure was regarded as minor in *Sienkiewicz.* The defendant held that any work exposure had been minimal and far less than the environmental exposure. The breach of the employer's duty of care was found to have merely increased the (very small) risk of developing mesothelioma by only 18%. However, the Supreme Court concluded that, as long as medical science is unable to demonstrate the exact mesothelioma origin, medical data were not a satisfactory basis for establishing liability. Therefore, where there is no known lower threshold of the exposure capable of causing mesothelioma, a very low level of asbestos must also be deemed sufficient, unless it is insignificant compared to other sources.

The Supreme Court endorsed that the *Fairchild* exception, which applies in "multiple exposure" mesothelioma cases - where the claimant was wrongly exposed by several defendants, also applies to "single exposure" cases (involving a single defendant and other non-tortious or environmental exposure). In the *Sienkiewicz*, the single defendant caused negligent limited exposure to asbestos, but environmental exposure was also present. The Supreme Court excluded conventional "balance of probabilities" test, and upheld the liability of the defendant.

BELGIAN LAW

From the Belgian perspective, it is remarkable that the UK courts abandoned the *conditio sine qua non* test, in favor of the Fairchild exception. Moreover, civil liability actions for asbestos exposure are very rare because the system of compensation funds is implemented (Vandenbussche, 2017, p. 1147).

To assess the causal link, the Belgian courts use a "but for" or *conditio sine qua non* test. Once the *sine qua non* link is established, they apply the equivalence theory: all the causes are considered equal - direct or indirect, normal or abnormal, foreseeable or unforeseeable. In asbestos litigation, causation is the most difficult hurdle. It is very hard – if not impossible – to prove which exposure and during which employment period was the actual cause, i.e. *conditio sine qua non*. The same difficulty also arises in pollution cases or after major traffic accidents - it is uncertain which member from a tortfeasor group actually caused the harm. Belgian courts refuse to abandon the *conditio sine qua non* requirement in alternative causation cases. As a result, when damage is due to an unidentified member of a group, a plaintiff will fail to prove a causal link. This is unsatisfactory since the victim will receive no compensation. To overcome this injustice, different techniques have been developed (Vandenbussche, 2017, pp. 1142, 1143).

First of all, the *conditio sine qua non* test can be bridged by vicarious liability. A judge can attribute liability to a custodian, parent, principal or teacher without identifying the actual wrongdoer. For example, a fire broke out at the company room where employees were allowed to smoke. The employer was held liable for the damage, although the actual fire-starter was unknown. As all potential tortfeasors were employees, it was not necessary to identify the real one (Vandenbussche, 2017, pp. 1144).

Secondly, there is a specific liability regime for multiple traffic collisions. When several vehicles are involved and it is impossible to determine who was responsible, the damage compensation will be equally distributed among the drivers' insurers, unless one can prove that "the concrete driver" is certainly not involved. This rule adopts vicarious joint and several liability, accompanied by the reversal of the burden of proof. The victim can sue each of the insurers for the entire harm (Vandenbussche, 2017, pp. 1144).

Thirdly, there is a judicial technique to overcome causal uncertainty. If we consider a group of potential tortfeasors to have been acting in concert (where a pact between members to commit a tort is presumed), all participants are held jointly and severally liable, so there is no longer the need to identify the actual tortfeasor(s). For example, four children are throwing stones to each other. The fifth boy, while running away from this activity is hit. The four children deny having thrown the fatal stone

and the boy cannot prove who is lying. All the children were playing a dangerous game, so the actual cause was not the individual harmful act, but their joint participation. Therefore, their parents are jointly and severally liable (Vandenbussche, 2017, pp. 1145). However, those techniques are unhelpful when several potential wrongdoers are unrelated to each other, such as in the asbestos cases.

Fourthly, the judge can also use evidentiary mechanisms to overcome causal uncertainty, such as presumptions of fact. This is a solution where the number of potential tortfeasors is limited and the circumstances are pointing at one of them. For example, a house situated near two quarries was hit by stones after excavation explosions. The victim could not prove which quarry was responsible. The judge dismisses the joint and several liability because the stones could only originate from one single quarry, and presumes as a fact that the damage was caused by the quarry closer to the house (Vandenbussche, 2017, pp. 1146).

Another similar mechanism is the judicial burden of proof reversal. A pedestrian was run over by a negligent car driver and afterwards was hit again by a second car. The court decides that the individual car driver can only be exculpated if he prove that his act was not the cause of death (in standard practice, the claimant needs to establish a causation) (Vandenbussche, 2017, pp. 1146).

FRENCH LAW

French courts use presumptions and probabilities in alternative causation cases. “DES” litigation is illustrative of this. The plaintiffs’ mothers had taken the DES drug while pregnant, and experts revealed this to be a proximate cause of reproductive tract cancers in the plaintiffs. Years later, victims were unable to identify the specific company that sold the pills absorbed by their mothers, since various producers made DES. Therefore, the defendant was unidentifiable. The Cour de cassation thus decided to reverse the burden of proof. If the claimant proves that damage resulted from DES, then she can be compensated by any or even by all DES manufacturers, *in solidum*. To avoid liability, the manufacturer must prove that his pills did not cause the harm, which is almost impossible. Nonetheless, the manufacturer who compensated the victim has a recourse action against other manufacturers. According to the first instance court, the compensation should be spread equally among the manufacturers. This solution was unfair because the market shares were different: one manufacturer had a 97%, whereas the other one had only 3%. The Second instance court rejected the first solution and ruled that each contribution should be determined according to the market share. In short, the DES litigation imposed proportional liability between tortfeasors (G’Sell, 2017, pp. 1111).

The French Project of Reform of Tort Liability at art. 1240 provides the burden of proof reversal in case of multiple possible defendants. It also stipulates the liability *in solidum* of all defendants toward the victim, and provides apportionment rules based on the probability that each defendant caused the harm (G'Sell, 2017, p. 1112). "Full compensation" is an essential principle of the French Tort Law. Therefore, the courts and the legislator favor reversing the burden of proof and liability *in solidum* on every possible wrongdoer (G'Sell, 2017, pp. 1113).

However, a recent development has shown that the Cour de cassation does not want to apply the same reasoning to all cases with alternative causation. In one case, a surgical compress was left in the abdomen of a patient who had undergone two similar surgical procedures in two different clinics. The patient sued two surgeons. Her claim was rejected since she was unable to determine which surgeon had negligently forgotten the compress (G'Sell, 2017, pp. 1111).

Regarding asbestos, the French government created a fund for the early retirement in 1999. The acceptance of the fund's compensation impedes any subsequent legal claims against the employer. The fund always files a recourse action when the employer commits an inexcusable negligence. If several employers commit something wrong, but it is impossible to determine which one caused the illness, then the fund recovers against employers in proportion to the actual duration of the employee's exposure. The employer who paid the compensation also has a recourse action against other employers. The goal is to achieve full and easy compensation for asbestos victims (G'Sell, 2017, pp. 1113, 1114, 1115).

GERMAN LAW

Asbestos cases against employers never reach the civil courts since there is an operational public insurance compensation system. Assuming that this system did not exist, we may ask the question of how the German courts would deal with mesothelioma cases (Wagner, 2013, pp. 321).

Paragraph 830 BGB provides: (1) If more than one person has caused damage by a jointly committed tort, then each of them is responsible for the damage. The same applies if it cannot be established which of several persons involved caused the damage by his act (Wagner, 2013, pp. 326).

Under this provision, several defendants are responsible for the full damage. However, the Federal Supreme Court (BGH) holds that joint and several liability is limited to cases where each wrongful contribution was sufficient to cause the whole damage. The classic example: two hunters shoot in the woods and kill a victim, and it is impossible to determine who fired the fatal bullet; alternative causation from par. 830(1) BGB applies and both hunters are liable in full. Each contribution alone is

sufficient to cause the full loss, but it remains unknown who the actual tortfeasor is. Another example: the husband of the deceased put five poisonous drops into her tea, her son added another five, and each dosage would have been lethal for the wife/mother (Wagner, 2013, pp. 327).

The BGH summarized the requirements for par. 830(1) application in three elements: (1) Each of the defendants must have committed a tort. The plaintiff needs to prove all the elements of delictual liability of every defendant, including wrongfulness, but excluding causation. (2) It is definitive that one of the defendants must have caused the harm. (3) Despite all evidence, it is impossible to establish who actually caused the harm (Wagner, 2013, pp. 327).

When individual contribution alone is not sufficient to cause the whole damage, it is argued that the individual tortfeasor should be held liable only in proportion to his contribution. There are two different theories. The traditional theory starts from the premise that par. 830 (1) BGB was designed to resolve causal uncertainty. Thus, that paragraph is not limited to cases where one victim confronts multiple potential tortfeasors, but should also govern situations of uncertainty whether the harm was caused by a single potential tortfeasor, on the one hand, and by the victim or by a natural cause, on the other hand. The size of the shares will be estimated by the court, taking into account the contributions and the gravity of the fault. When the victim or a natural cause is involved, the compensation will be proportionally reduced (Wagner, 2013, pp. 327-328).

The second theory for causal uncertainty takes inspiration from law and economics. If it is impossible to establish whether the harm was caused by A or B, or the victim or a natural cause, the law should avoid extreme solutions as claim rejection or full joint and several liability. Rather, each defendant should be held liable for a portion of the harm. The portion size should not be determined by causal contributions or even the gravity of fault, but rather by calculus. The share of any defendant should be equal to the likelihood of causing the harm (Wagner, 2013, pp. 328).

If the *Sienkiewicz* case had occurred in Germany, both theories would hold the defendant liable only for a portion of the loss. However, the calculation methods are different. The followers of the traditional approach would measure the contribution of the defendant against the natural causes (the background risk). In contrast, the followers of the law-and-economics approach would calculate the likelihood that it was the defendant who caused the harm (Wagner, 2013, pp. 328).

In *Sienkiewicz*, the background risk approximated 24 victims in 1 million people, while the employment pushed that number up to 28.34. The likelihood that a patient suffering from mesothelioma contracted the disease from a natural source is therefore 24 of 28.34 or 84.686%, while the likelihood that the defendant had caused the disease was 4.34 of 28.34 or 15.314%. Therefore, the compensation would be 15.314% of the

damages (Wagner, 2013, pp. 328). The law-and-economics approach is attractive because it "calculates" the portion precisely.

However, there are downsides to proportional liability: the tort law compensatory function is not fulfilled; in high-profile and large-scale cases like mesothelioma, the social problem persists; the incentive for victims to bring action is greatly diminished if the potential reward is partial recovery only. This was the motivation for English lawmakers to abolish proportional liability, making way for full recovery (Wagner, 2013, pp. 329). We will see that the continental jurists have a different idea.

ITALIAN LAW

The main problem here are two conflicting scientific theories about mesothelioma. The "single fiber theory" claims that cancer is triggered by a single asbestos fiber, therefore subsequent exposures have no causative effect. On the contrary, the "multi-fiber theory" holds that accumulated asbestos fibers in the lungs jointly produce mutations. If the first theory is applied, the plaintiff must prove that the defendant exposed him to the fiber that triggered mesothelioma. The adoption of the second theory requires the plaintiff to prove that the defendant contributed to the exposure. These differences call for dual legal reasoning in causation assessment, since both theories are acknowledged by the scientific community (Coggiola, 2013, pp. 331-332). Moreover, if the traditional "but for test" is applied, it would be generally very difficult or even impossible for the plaintiff to prove anything.

The Italian general rule on civil liability provides that the defendant can be held liable if there is a causation link between the defendant's act and the resulting harm. The burden of proof lies with the plaintiff. The existence of a causal link is determined by *conditio sine qua non* test. In contrast to English courts, the Italian courts never developed a special test for mesothelioma. Moreover, decisions are quite inconsistent with each other (Coggiola, 2013, pp. 334).

The criteria used to ascertain the liability can be roughly divided into three main categories. 1) By excluding the possibility that the mesothelioma was caused by another factor, especially in cases where the only known exposure was the one caused by the defendant. 2) If the existence of other possible causes could not be excluded with certainty, the judge can hold the defendant liable because he believes that there is a high probability that workplace exposure was critical. 3) Lastly, the Corte di Cassazione on two occasions affirmed that the defendant is liable when he failed to provide safety measures sufficient to reduce the mesothelioma risk. The causation link must be examined by assessment of the provided measures (Coggiola, 2013, pp. 334).

The diversity of the solutions applied by the Italian civil courts generates uncertainties, so victims seek protection in a more comfortable criminal procedure. Similarly, defendants are unable to predict the volume of their future financial obligations toward their insurers.

The relationship between scientific theories and the Italian judicial reasoning was tricky. The scientific expert affirm that the mesothelioma is notoriously caused by asbestos and that all dead workers must have been exposed to it in the factory during workhours. Following this opinion, the Corte di Appello adhered to the multi-fiber theory, the prolonged exposure and poor working conditions. Extended exposure had heightened the risk of mesothelioma and therefore could be regarded as the concurrent cause of the deaths. In the words of the Corte di Appello, this judgment was not the consequence of a concrete scientific assessment, but the result of reasonable adherence to a scientific theory. The defendant appealed. The Cassazione concluded that when two contrasting scientific theories are present (the multi-fiber vs. single-fiber theory), the judge must exclude alternative causes and must verify the scientific theory reliability (Coggiola, 2013, pp. 335-336).

Scientific theories are mere instruments to prove facts. When faced with contrasting scientific theories, the judge must explain the motives for selection, based on the following parameters: the epistemological reasoning must be dialectic to the outcome; the judge does not create the natural laws but simply discoverers them; the causation must be without any reasonable doubt. Three principles are important: first, the judge must evaluate scientific opinions critically and not passively; second, the judge's duty is to apply the scientific rules, not to work them out; third, there must be no reasonable doubt whether the causation is science-based. Hence, the judge must clearly justify his choices (Coggiola, 2013, pp. 337). The mentioned decision of the criminal branch of the Corte di Cassazione will most probably have no influence in civil cases (Coggiola, 2013, pp. 339).

The complexity of the contemporary world increasingly requires the employment of scientific theories in law. Judges are frequently obliged to ask for expert scientific opinions and explanations. This creates a risk of uncritical scientific theory adoption rather than the autonomous judicial decision (Coggiola, 2013, pp. 338).

THE NETHERLANDS LAW

A plaintiff needs to prove the causal link between the tortfeasor´s wrongful conduct and the damage: the question is whether the damage would not have occurred if the tortfeasor had followed the relevant norm in question (employer's duty of care). If the answer to this question is positive, then the causal connection does exist (*conditio sine qua non*). Traditionally, if a wrongful act is not *conditio sine qua non*, causality cannot be established; thus, the claim will be dismissed (Samii, 2013, p. 347).

An asbestos victim is usually unable to establish causation due to multiple possible sources or a large degree of uncertainty. The provision of Article 7:658 of the Civil Code, as well as the general tort clause of Article 6:162, traditionally adhere to an all-or-nothing rule, effective in its simplicity and legal certainty. According to the all-or-nothing rule, the employee cannot be awarded any compensation when *conditio sine qua non* is not established. Hence, the risk of uncertainty is completely shifted to the employee. A contradictory situation is equally conceivable, in which an employer is held liable for the whole damage, in spite of a great likelihood that part of the damage is attributable to non-occupational environmental exposure (Samii, 2013, pp. 348, 354, 358). Since both extremes are neither just nor reasonable, the Dutch law has sought alternatives to the traditional all-or-nothing rule.

THE EMPLOYER'S LIABILITY

Article 7:658 of the (New) Civil Code, puts a clear obligation on the employer to protect his employees from workplace harm (Samii, 2013, pp. 349). The plaintiff must prove that the damage is connected to earlier employment (the requirement of functional connection). Case law concerning asbestos liability has elaborated this rule. Firstly, the victim needs to prove that, at some point during employment, he was actually exposed to asbestos. Secondly, the protection of the weaker party is echoed in the case law. The proof of functional connection has been eased in favour of the employee. The causation is presumed if the employer has failed to take the adequate measures to avoid harm. Practically, the employee is only required to prove that he was exposed and that this exposure could be the cause of illness (Samii, 2013, pp. 351-352).

The employer can avoid liability by proving that he has taken the reasonably expected safety measures. Before 1960, the link between asbestos and mesothelioma was not known, the disease was not yet recognized, therefore the employer was unable to take the appropriate safety measures in order to prevent this concrete harm. The Supreme Court rejected this argument as it was well-known that asbestos is dangerous, even though mesothelioma was an unknown risk (Samii, 2013, pp. 352).

In contrast to this, in another case, the exposure was relatively short and the employer did not actually produce or use of asbestos. The Supreme Court accepted these arguments and found that the employer had sufficiently proven the lack of fault. Similarly, the employer can avoid liability if harm was caused by the employee's willful intent or conscious recklessness, or is the result of non-workspace exposure. This is in fact the disproving of the *conditio sine qua non* connection, by demonstrating that the damage would have occurred despite the employer taking adequate safety measures (Samii, 2013, pp. 354).

Case law on occupational asbestos liability shows that the courts rarely leave the employee empty-handed. Nefalit v. Karamus has been one of the most ground-breaking precedents in the Dutch civil law, with far-reaching consequences (*Nefalit v. Karamus*, 2006). During his employment by Nefalit, Karamus, a smoker, had been exposed to asbestos, and later contracted lung cancer. He claimed damages, based on the employer's liability under Article 7:658 Civil Code. Scientifically, it was not possible to establish which of the various possible causes – asbestos, smoking, a physical condition, or background risks – had led to the cancer. Nonetheless, a certain degree of probability that asbestos was indeed the cause remained plausible. An expert estimated this probability to be 55 %. Nefalit argued that long term smoking was the principal cause. The Court ordered the employer to compensate the employee, while reducing his duty proportionally, since the employee has also contributed to his own condition. Hence, the employer was ordered to compensate 55% of the damage. This case opened the gates for the proportional liability in Dutch tort law (Samii, 2013, pp. 354-356).

NON-OCCUPATIONAL ASBESTOS LIABILITY

The article 6:162 Civil Code is a negligence-based liability provision, meaning that for liability to arise, there must be an unlawful damaging act, attributed to the wrongdoer. Any conduct is unlawful if it infringes on someone's right, is in violation of the statuary duty of care, or even against an unwritten rule. In contrast to occupational victims, the victims of domestic or environmental asbestos exposure who claim compensation under Article 6:162 Civil Code are in a considerably less favorable legal position. First of all, the burden of proof of fault lies with the claimant, who must prove that the defendant was aware of the hazard involved (Samii, 2013, pp. 360).

In one case the former pupil alleged that the school exposed him to the carcinogenic substance. The school argued that the asbestos in the building was completely sealed off and was not damaged; hence, the former pupil could not have contracted the illness during the time spent at the school. The court held that the causal link was consequently not established. The claim was dismissed, the school's conduct was not wrongful (Samii, 2013, pp. 362).

However, thanks to case law, there is a reversal of the burden of proof regarding causation, the so-called "*omkeringsregel*." It is a rebuttable presumption that, when a norm which prevents a specific danger has been breached, and the risk is significantly engorged by that violation, the causal link between the breach and the damage suffered is presumed. Based on reasonableness and fairness, the "*omkeringsregel*" provides that whenever a wrongful act creates or increases a certain risk of damage which actually materializes, the causal link is assumed. The wrongdoer can make plausible

that even if he had not acted wrongfully, the damage would nevertheless have occurred (Samii, 2013, pp. 361).

Based on reasonableness and fairness and in line with *Karamus v. Nefalit*, it seems unacceptable that the risk of causal uncertainty is completely shifted to either the employee or the employer. The full compensation would be out of the question according to the traditional Dutch law. Because of the all-or-nothing approach, claims, such as that in the case of *Sienkiewicz*, would be unsuccessful. Both the English and Dutch law thus provide the victims with compensation, albeit in significantly varying degrees. The position of mesothelioma victims is stronger under the English law, though. (Samii, 2013, pp. 369).

The adoption of proportional liability has been a ultimate achievement. The traditional all-or-nothing approach is neither logical nor it provides for a desired solution. It is therefore more reasonable to spread the damages onto parties in proportion to the degree of co-responsibility. Proportional liability is just, and in accordance with the Principles of European Tort Law (Samii, 2013, pp. 370).

CONCLUDING REMARKS

Responding to divergent national practice, the Principles of European Tort Law (PETL) offer well-grounded solutions for uncertain causality, deducted from asbestos litigations. These are presented in three different hypotheticals, and could be used in Serbian or any other national practice.

Scenario 1: Multiple tortfeasors, where each wrongful contribution was sufficient to cause damage. An employee is exposed to workplace asbestos with successive employers. He subsequently develops mesothelioma and brings an action for damages. It was uncertain which of the several persons had caused the damage, but the causation by these persons was certain. It is impossible for the employee to prove who of the successive employers particularly and most significantly contributed to his illness. He is thus unable to prove that, in the absence of the exposure during concrete engagement, he would not have fallen ill (Zimmermann & et al, 2007, pp. 386). The standard *conditio sine qua non* test fails.

Art. 3:103 PETL contains the provision on Alternative Causes (1) that reads: "In case of multiple activities, where each of them alone would have been sufficient to cause the damage, but it remains uncertain which one in fact caused it, each activity is regarded as a cause to the extent corresponding to the likelihood that it may have caused the victim's damage."

Under this provision, it is enough to prove that the risk to which the worker was exposed by any employer was sufficient to cause the disease, since the scientific evidence states that single exposure is sufficient. All employers are liable, each of them to the extent determined by the duration and intensity of exposure (Zimmermann & et al, 2007, pp. 387).

The case in which all contributions were necessary to cause the damage may, however, also be analyzed under Art. 9:101 (3) PETL. When there is reasonable basis for attributing only a part of damage, each person is liable only for the part of the damage attributable to him. Although the damage (cancer) is indivisible, the periods of the employees' exposure to asbestos by the employers are different and well known. Thus, the employers' liability would not be solidary but proportional.

However, if the damage did not result from a single exposure but the exposure of all employers was necessary for the risk to materialize (cumulative effect), each employer's activity would be a *conditio sine qua non* for the damage. The employers would then be liable *in solidum*, under Art. 9:101 (1) 2 b) PETL: "Liability is solidary where […] one person's independent behavior or activity causes damage to the victim and the same damage is also attributable to another person" (Zimmermann & et al, 2007, pp. 386).

Scenario 2: A single tortfeasor and the victim's contribution. V is exposed to asbestos during his work. This exposure amounts to 35 fiber years (measure for relative extent of exposure). Besides, he has been smoking from age 17 onwards, around 20 cigarettes a day. V dies from lung cancer. The exposure to asbestos can lead to cancer, and the same is true for smoking. Given the 35 fiber years, the chance that V became ill because of the asbestos was 26% (Zimmermann & et al, 2007, pp. 435).

It is impossible to establish with certainty whether the damage is due to the asbestos or smoking. According to Art. 3:103 (1) PETL, "activities" include activities within the victim's own sphere. This leads to a proportional distribution of the loss between a tortfeasor and the victim. Each of the causes alone (asbestos or smoking) would have been sufficient to cause the damage, but it remains uncertain which one caused it for real. Therefore, the employer is liable for 26% of damage (Zimmermann & et al, 2007, p. 435).

Scenario 3: Multiple tortfeasors and environmental exposure. An employee is exposed to asbestos during his employment with successive employers. He develops a fatal cancer and brings an action for damages. The mesothelioma is most probably caused by workplace exposure, however, a small risk might result from environmental exposure as well (Zimmermann & et al, 2007, pp. 538).

As seen in Scenario 1, the employers are liable proportionally. Can they ask for a reduction because of environmental exposure? The probability that the disease was caused by natural events is a circumstance within the victim's sphere (Art. 3:106 PETL). However, one must quantify this low risk in order to take it into consideration. If the probability that the damage was caused by environmental exposure was 2%, it would reduce the employers' liability to 98%. However, many European courts prefer to ignore very small risks as long as considerably high risk can be identified (Zimmermann & et al, 2007, pp. 539).

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АЛТЕРНАТИВНИ КАУЗАЛИТЕТ У ОДШТЕТНОМ ПРАВУ

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Резиме

Заснивање одговорности за проузроковану штету захтева постојање узрочне везе између штетне радње и негативних последица. Мада је у највећем броју случајева узрочна веза очигледна, постоје ситуације када је њено утврђивање сложено зато што има више потенцијалних узрока, односно постоји временска или просторна удаљеност између штетног догађаја и штете. Такви проблеми погодили су многобројне жртве чије је здравље озбиљно нарушено услед канцерогеног дејства азбеста. Пун обим штетног утицаја азбеста откривен је тек након његове дугорочне и масовне употребе широм Европе. Оштећени су се суочили са проблемом утврђивања и доказивања узрочне везе. Најтеже су погођени запослени оболели након вишегодишњег излагања код различитих послодаваца. Ниво медицинских и научних сазнања није био задовољавајући, те није било јасно да ли је мезотелиом (фатални канцер) изазван једнократним излагањем или кумулативним утицајем. Традиционална решења одштетног права нису обезбедила правичну накнаду. Класични „sine qua non" тест узрочности био је неприкла-

дан јер је свако од послодаваца могао да приговори да се излагање догодило док је запослени био на раду код неког другог послодавца, или да је жртва својим понашањем допринела штети, или да је узрок атмосферски азбест. Осим тога, принцип „све или ништа" приликом одлучивања о накнади доводио је туженог или тужиоца у несразмерно неповољан положај. Зато се у парницама поводом азбеста развило учење о алтернативном каузалитету. Диференцирали су се различити приступи према томе да ли се ради о професионалном обољењу или је у питању неуговорна одговорност. Судови су напустили традиционални тест узрочности, окренули терет доказивања у корист жртве, ослонили се на вероватноћу, што је омогућило бољу расподелу одговорности, и увели претпоставке да би олакшали одлучивање. Донети су посебни прописи, формирани су фондови за обештећење, јавила су се нова тумачења старих института, као што је одговорност за другог. Судска пракса и доктрина настали поводом азбеста расветлили су тако најсложенију област одштетног права – узрочност. Најбоља решења европске јуриспруденције објединила су „Начела европског одштетног права", где су поједине одредбе намењене управо замршеним случајевима као што су: конкурентни, потенцијални, кумулативни, престижући и алтернативни каузалитет. Познавање алтернативног каузалитета корисно је у сложеним споровима када више штетника узрокује исту штету; када се неки узроци везују за самог оштећеног, односно постоје узроци невезани за штетнике, што је врло значајно за медицинску, еколошку и саобраћајну одговорност. Нема јединственог решења. Док је за неке ситуације најприкладнија солидарна одговорност, у другим се истиче пропорционална, мада се и њој могу ставити замерке. Са развојем егзактне науке, проблем природне узрочности ће се смањивати, али јуристички каузалитет остаје зависан од нормативних циљева и политике обештећења.

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LEGALLY RELEVANT DAMAGE [a]

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Abstract

The author analyzes legally relevant damage - a concept used by the Study Group on European Civil Code in order to define those losses for which a legal redress is given under the tort law. There are eleven particular instances of legally relevant damage caused either to one's personality, rights or property. What is also important are the infringements of other rights and interests, but they need to satisfy additional criteria in order to be recognized as legally relevant damage. Only such rights that enjoy protection against everyone are protected, therefore, anyone can infringe them. Interests are also protected if they satisfy the requirements to be worthy of legal protection.

Key words: legally relevant damage, loss, tort liability.

ПРАВНО ЗНАЧАЈНА ШТЕТА

Апстракт

У раду је анализована правно значајна штета, појам којим је Студијска група за Европски грађански законик означила губитке надокнадиве по правилима одштетног права. Осим једанаест посебно уређених врста правно значајне штете, дати су и критеријуми на основу којих ће постојање овакве штете бити утврђивано у случајевима необухваћеним њеним посебним врстама. Важно је да буде повређено право које делује према свима или интерес достојан правне заштите.

Кључне речи: правно значајна штета, губитак, деликтна одговорност.

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INTRODUCTION

Not every loss which one suffers and is prone to call damage actually is damage in a legal sense. In the eyes of the law, damage is only such a loss for which legal remedy is provided, namely a right of the injured person to ask reparation from the person who caused the loss or other responsible person.

It is not an easy task to give one general definition of damage that could encompass all of its manifestations, for there are many differences between them. Like most of the European laws, Serbian legislator does not define damage; instead two instances of damage are regulated – material and non-material damage – and three manifestations of the latter: physical pain, mental pain and suffering and fear.

The definition of damage is left to the law theory where it is said that damage is the infringement of material or non-material (personal) subjective rights or legally protected interests belonging to another person, and this infringement should be removed according to the rules of the tort law (Pop Georgiev, 1980). The law recognizes only such reductions in assets, or prevention from its reasonably expected increase, which is caused by someone else's prohibited behavior and is to be repaired by that responsible person (Radišić, 2008, pp. 197).

These definitions teach us that the legal notion of damage focuses on several points. First, damage is such detrimental impact which a person suffers against his/her will; also, this detriment is caused to the person's legally protected rights and interests; and, lastly, it is that detriment that is to be removed by a person who caused it or is in another way responsible for it. In case that the injured person must deal with his/her loss by himself/herself, and not be able to ask reparation from other else, then we are only faced with economic loss, but not with legally relevant damage.

Judging by the projects for the unification or codification of the European private law, we may say that *legally relevant damage,* which is one of the requisites for the imposition of delictual liability, arises as an important concept in modern tort law. Instead of the enumeration of the legally protected rights and interests, these projects find it more important to determine the requisites under which the loss of one person (either material or non-material) can be attributed to another person who is then responsible to remove it by way of reparation in kind or money. Provided that these conditions are met, then we are in the presence of *legally relevant damage,* for which the law provides adequate remedy. This kind of approach we find in the project prepared by the Study Group on the European Civil Code, under the auspices of professor Christian von Bar, published in 2009, under the title "Principles of European Law, Non-Contractual Liabilaty Arising out of Damage Caused to Another" (from here after: PEL Liab. Dam.). Worth mentioning are also the project of the European Group for Tort Law, run by professor Helmut Koziol (*Principles*

of European Tort Law, PETL, art. 1: 101, 2: 102 and 3: 201), but also the work of several commissions for the reform of the French obligation law and the Austrian tort law.[1]

In this paper we focus our attention on the concept of legally relevant damage as defined in the Principles of the European Law, the Non-Contractual Liability Arising out of Damage Caused to Another. Before that, we turn our attention to the purpose of tort law and to the notion of damage from a comparative perspective.

THE PURPOSE OF TORT LAW AND THE REMEDY FOR THE DAMAGE CAUSED

In all European legal systems there are rules on the bases of which it is decided whether a person who has suffered damage can demand reparation from another or, in case of impending damage, that preventive measure be taken. The law containing these rules is called tort law (law of delict) which establishes the criteria which – if satisfied – guarantee the right of the injured person to be put in the position in which he/she would be, had the detriment not occurred. In order to serve this purpose, the tort law can rely on a general principle that anyone who causes damage to another is obliged to make reparation (*neminem laedere principle*). Another method is to establish a list of protected rights and legal interests for which a remedy in tort law is provided. The closer inspection of European laws shows that both approaches are present, but neither of them gives an exhaustive list of all the protected rights and interests, for it is almost impossible to create such a closed catalogue. Laws which rely on some kind of enumeration (such as the German and Austrian laws) are also open to protection of other rights and interests, provided that prescribed requirements of tort liability are met.

Not every loss constitutes damage. All legal systems distinguish between loss and damage and do not identify one with the other. Some losses are recoverable under the tort law, for they are conceived as damage, other must be borne by a person who suffered the loss. "The law of delict can only operate as an effective, sensible and fair system of compensation if excessive liability is avoided" (Von Bar, 2000, p. 4). We would also like to add that setting borders between loss and damage is necessary to prevent spreading liability on the remote consequences of one's conduct, therefore, they must be exempt from responsibility.

In order to accomplish a fair balance of interests involved, the law needs to establish certain criteria for moving the loss, which represents

[1] For further reading about other here mentioned projects, see: Ranieri, 2008, pp. 1457-1464, 1533-1538

damage, from the sphere of the person who suffered it into the sphere of a person who is obliged to bear it eventually, for the loss can be attributed to his/her conduct or omission. Defining damage and setting requirements of tort liability are at the core of tort law.

> „The purpose of the law of torts consists predominantly in protecting human and basic rights at the level of private law, that is to say horizontally between citizens *inter se*, with the legal remedies made mutual available." (Von Bar, 2009, pp. 229)

> "Liability in tort should protect property of a person from being unlawfully damaged by others, as well as her non-material (personality) rights." (Klarić & Vedriš, 2009, pp. 583)

Damage is the detrimental infringement of the legally protected rights and interests held by one person, which the person responsible for the damage is obliged to repair. Seen from the perspective of the requirements for tort liability, together with causation and accountability, damage is a necessary and constant[2] constituent of every liability regardless of the ground of accountability (fault, created risk or equity).

In most of the European legal systems the mere violation of the protected right does not represent damage. A further loss is required because tort liability is imposed for the consequences of one's (unlawful) behavior, not for behavior itself. An injured person must prove his/her loss, usually by comparing his/her current material position with a hypothetical one, one which would have existed had the harmful event not occurred, therefore establishing obligation to make reparation (the so-called *Differenztheorie*). The decreased value of the infringed person's property represents the legally relevant damage and loss that can be repaired (provided that all other requirements of tort liability are met). Non-material damage which cannot be assessed in economic terms is also recoverable for the purpose of the satisfaction of the injured person.

THE CONCEPT OF DAMAGE FROM THE COMPARATIVE PERSPECTIVE

The concept of damage is seldom defined in civil codes. Apart from a few exceptions, we can name the Austrian Civil Code and the Serbian Act on Obligation Relationships which, in fact, determine the

[2] Occasional requirements are the fault and wrongfulness of behavior which caused the damage. Fault does not figure in cases of strict liability (damage caused by dangerous thing or dangerous activity), where a person is responsible for the created risk, independently of any fault on his/her side. Equitable liability is also based on the non-fault principle. (See: Radišić, 2008, p. 196. Also: Klarić & Vedriš, 2009, p. 584 and Crnić, 2008, p. 4, who divides liability requirements into general and special; according to this division, damage is common to all types of liability, therefore, it is a general requisite.)

instances of damage. The Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch – ABGB, 1811, § 1293) states that damage is any harm caused to a person's property, rights or person). According to art. 155 of the Serbian Act on Obligation Relationships (Закон о облигационим односима, 1978) damage is the reduction in the value of one's property (plain damage) and the prevention of reasonably expected increase of its value (lost benefit), also the infliction of physical pain, mental pain and suffering and fear (non-material damage). The law makes both material and non-material damage recoverable (for the latter, under the rules set in art. 200 of the Serbian Act on Obligation Relationships) and both of them are the result of the interference with another person's subjective rights and legally protected interests.

The history of law teaches us that the first delictual claims were precisely determined: there were specific torts which protected a person from the precisely determined type of harm. This is best shown on the example of the Roman law. Roman jurists recognized particular torts and had never came to a general principle that the person who causes damage to another has to give adequate reparation.

The most important torts - *iniuria, furtum* and an action under *lex Aqulia* – had very narrow circle of protected rights. The action for *iniuria* could be given for different kinds of offensive behaviors which injure bodily integrity, freedom and the life of another; an action for *furtum* protected property of the claimant (at first from theft, later from every unauthorized interference with property, such as the unauthorized use of thing belonging to other) (Zweigert & Kötz, 1996). There were two basic requirements for an action under *lex Aquilia* (or the so-called Aquilian liability): the defendant had to be at fault (i.e. causing damage intentionally or negligently), and that the claimant suffered certain types of harms (Gordley, 2006, p. 160). For example, one who kills a slave or an animal had to pay a fine of a certain amount (Stojanović, 1982, pp. 1180).

The casuistic method of the Roman law was an obstacle for establishing one general rule that anyone who causes damage to another is obliged to repair it. For such a clause one had to wait until 19th century and the first civil law codifications written under the influence of the natural law. Article 1382 of the French Civil Code (Code Civil, 1804) is known as one of the first rules that provide the general duty of reparation of the damage caused, *faute* (through fault, either acting intentionally or negligently). The French courts had the responsible task of establishing additional requirements for tort liability. Soon after the French Code entered into force the meaning of damage (*dommage*) had to be defined, for nothing in this Code explains this expression. The French courts adopted an approach that both material as well as non-material damage (*dommage moral*) are recoverable, provided that all other requirements are met (See: Von Bar, 2009, pp. 315-316).

The fathers of the German Civil Code took a different approach. Instead of a general clause, they provided three separate paragraphs which determine the domain and common requirements of tort liability. Paragraph 823 of the German Civil Code (Deutsches Bürgerliches Gesetzbuch – BGB) draws up a list of the protected rights and interests. The first section of this paragraph provides that a person who intentionally or negligently, unlawfully (*widerrechtlich*), injures the life, the health, the freedom, property or similar right (*sonstiges Recht*) of another has a duty to compensate for the inflicted damage. Under the expression, *similar right* protection was guaranteed for other rights, not included in the list, provided that they are absolute rights, protected against everyone, therefore anyone can infringe them (Zweigert & Kötz: 1996; Teichmann, Jauernig, 2007, pp. 1112). Alongside these enumerated rights, according to para 823 section (2) of the BGB, liability can be imposed for the breach of statutory duty whose purpose is the protection of a person suffering damage from that damage. The third pillar of tort liability in the German law is paragraph 826 of the BGB which makes recoverable the damage caused by an act contrary to good faith and fair dealing (*verstoß gegen guten Sitten*). This rule protects both the material and non-material interests from intentionally or negligently caused damage. For liability it is enough that the injured person proves that the injuring person could have reasonably known that damage was possible and yet did nothing to prevent it (Zweigert & Kötz, 1996).

The dominant feature of the French tort law is that it is developed in court practice. Yet, one cannot dispute the creative role of the German courts in making additional rules on tort liability. Soon after the BGB came into force, it became evident that paragraphs mentioned earlier are insufficient for the protection of those rights and legal interests which they do not mention, but are worthy of protection. The Code explicitly protects the most important personal assets such as life, freedom and bodily integrity (name, picture and copyright are protected by separate provision of the Code), but the entire personality is not protected. The German Federal court made it possible with its opinion from 1954 that general right to personality is that similar right mentioned in § 823 subpar. 1 of the BGB. The same applies to the right to freely exercise business activity (Zweigert & Kötz, 1996).

The Roman law tradition is usually associated with civil law legal system. Yet, when it comes to the tort law, on the examples of French and partially German law, we see a divergence; the casuistic method is not a feature of laws which are part of this system. The English tort law, on the other hand, developed similarly to the Roman law actions for inflicted harm - particular types of actions prohibit distinct types of wrongs and

protect one specific right.[3] There are roughly around 70 to 75 torts, out of which trespass, negligence (which is the most important), breach of statutory duty, nuisance and defamation are the most frequent in court practice (Von Bar, 2009, pp. 230).

THE VIOLATION OF PERSONALITY RIGHTS AS DAMAGE

The concept of material damage in Croatian obligation law is similar to its Serbian counterpart due to their shared legal tradition. The point of departure is the definition of non-material damage; the Croatian Act on Obligation Relationships from 2005 (Zakon o obveznim odnosima Republike Hrvatske, čl. 1046) opted for the objective concept, according to which a mere infringement of personality rights constitutes non-material damage. Nonetheless, remedy, specifically, the right to equitable compensation, is only given under additional requirements set in art. 1099-1106. In case of a dispute, the court will decide whether monetary compensation is justified by taking into account the seriousness of injury and the circumstances of the case (Zakon o obveznim odnosima, čl. 1100, st. 2).[4] This new concept, which is in line with modern theory on non-material damage, was criticized in law theory. It was said that it does not reflect the true nature of tort law, one concerned with the reparation of the consequences the injured person suffers. Damages should be given for the consequences which, in case of non-material damage, are various types of physical and/or mental pain and suffering (Crnić, 2008, pp. 557-558).

The objective concept of non-material damage points out the importance of protected rights and interests allowing their mere infringements to be enough for legally relevant damage and compensation. These rights are personality rights which enjoy special protection. Not only that they are protected by constitutional and criminal law rules, but civil law protection is also provided with the rule that violation of personality rights is damage *per se* and gives right to remedy. This remedy need not to be monetary compensation, for circumstances of the case may indicate that some other remedy is better suited. For example, the violation of one's honor

[3] Until 19th century, the English law was organized by writs where classifications and definitions of different species of injuries had to be based on the old procedural distinction between forms of action. (Salmond, Torts, 182, according to Gordley, 2006, p. 181, footnote 151)

[4] The seriousness of an injury will be assessed by the court on the basis of intensity and length of physical and mental pain and fear. These parameters are „obstacles to lucrative aspirations and commercialization of non-material damage" (Crnić, 2008, 644). The court will also appraise the purpose of monetary compensation and will not allow that it is used for purposes not in line with its nature and function (art. 1100 of the Croatian Act on Obligation Relationships).

and reputation can be better sanctioned with an apology for slander or by the withdrawal of the newspaper containing the defamatory article.

The concept of non-material damage is familiar to most of the European legal systems. There are laws, such as the Italian law, which recognize another type of damage called biological damage (*danno biologico*) (Von Bar, 2000, pp. 24). This damage arises from the violation of the right to psycho-physical integrity protected by the constitution and can be repaired independently of any material or non-material damage (*danno patrimoniale* and *danno morale*, Codice civile, 1942, art. 2043 and art. 2059).

The concept of biological damage is the result of the work of Italian courts which redefined the general concept of damage. It was no longer only the difference in the economic position of the victim before and after the damaging event. Rather, the violation of the person's body or health constitutes the *danno evento*, to be compensated even when the plaintiff can claim damages for neither pain nor suffering under art. 2059 of the Italian Code, nor pecuniary loss under art. 2043 (Von Bar, 2000, pp. 24). The remedy for *danno evento* (event-related damage) is a compensation which is quite autonomous from other remedies that might be given for further losses the claimant suffers. This way, biological damage has become the third type of damage in Italian law, next to material and non-material damage. All three types of damages are independent from each other, and the compensation of one type does not preclude the compensation for the other two. It seems that the concept of biological damage has become established in court practice and is not disputed.

> "The current question in Italy is thus not whether to retreat from the current position, but whether the concept of *danno evento* can justifiably be restricted to personal injuries alone." (Von Bar, 2000, pp. 27).[5]

THE CONCEPT OF LEGALLY RELEVANT DAMAGE

The Study Group on the European Civil Code decided to use the concept of legally relevant damage as one of general requirements for tort liability established in article 1:101 of PEL Liab. Dam. which serves as the basic rule. It states: A person who suffers legally relevant damage has a right to reparation from a person who caused the damage intentionally or negligently or is otherwise accountable for the causation of the damage (Article 1: 101: Basic rule). Therefore, the prerequisites for tort liability

[5] It seems that courts in Portugal are also ready to acknowledge biological damage as a third form of damage. It is viewed as a moral damage (compensable independently of compensation for pain and suffering) in case of severe physical alteration of an individual or his way of life resulting from loss of health, freedom, free will or privacy. (Von Bar, 2009, p. 27)

are: legally relevant damage, grounds of accountability[6], causation and absence of defenses[7].

Rules of the Chapter 2 of PEL Liab. Dam. explain what is to be considered as legally relevant damage. There are eleven particular instances of damage which are preceded by the rule containing the criteria for establishing tort liability for those infringements which are not specifically mentioned in the following articles.

In order to ascertain whether a person has suffered a legally relevant damage one must start with the rules which regulate the particular instances of the legally relevant damage (PEL Liab. Dam. Section 2, art. 2: 201-2: 211). The Rule from the beginning of the fifth Chapter (art. 2:101 - Meaning of legally relevant damage) applies as a subsidiary - if the infringed right or interest is not categorized among particular forms of damage. The drafters decided for this order of rules to avoid the wrong impression that the list of legally relevant damage closes with those eleven particular forms of damage and that the protection of other rights and interests is not possible (Von Bar, 2009, p. 301). The list is open for new forms of damage under the criteria set up in art. 2:101 of PEL Liab. Dam. which will be decided by the court. Article 2:101 of PEL Liab. Dam which explains the meaning of legally relevant damage is a blanket rule and is to be determined in every day court practice.

PARTICULAR INSTANCES OF LEGALLY RELEVANT DAMAGE

Closer inspection of articles 2: 201-2: 211 of PEL Liab. Dam. shows that particular instances of damage are typical infringements of rights and interests which are sanctioned under tort liability in most European laws. First, there is damage as a result of the infringement of personality rights. These are: damage to the person (death, personal injury and consequential loss, infringement of dignity, liberty and privacy); damage resulting from the communication of incorrect information about another and loss upon breach of confidence. These instances of damage are followed by provisions on damage to the property and proprietary interests (loss upon infringement of property and lawful possession), damage as a consequence of reliance on incorrect advice or information, loss upon unlawful impairment of business and pure ecological damage.

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[6] Grounds of accountability are: intention and negligence, accountability for damage caused by employees and representatives (vicarious accountability), accountability for damage caused by defective products, by dangerous substances or emissions (see: Chapter 3 of PEL Liab. Dam.).

[7] Defenses can relieve responsible person of liability for damage (see: Chapter 5 of PEL Liab. Dam.).

A person can be held accountable for the causation of damage mentioned in the previous section if he/she acted either with the intention or he/she was negligent, but also independently of any fault on his/her side. We point out this fact because there are few instances of damage which can be present only if there is intentional conduct. These cases are fraudulent misrepresentation (deceit) and inducement of non-performance of obligation.

THE MEANING OF LEGALLY RELEVANT DAMAGE

As already mentioned, the concept of legally relevant damage is set upon three pillars. The first pillar encompasses the eleven particular instances of damage, regulated in detail by special provisions, which by no means complete the list of rights and interests protected by the law of tort.[8] Important are also the infringements of other rights and interests, but they need to satisfy additional criteria in order to be recognized as legally relevant damage. Provisions regulating these criteria are the second and the third pillar of the concept of legally relevant damage as seen by the drafters of the Principles of European Law.

The article 2: 101: Meaning of legally relevant damage reads as follows:

(1) Loss, whether economic or non-economic, or injury is legally relevant damage only if:
  (a) one of the following rules of this Chapter so provides;
  (b) the loss or injury results from a violation of a right otherwise conferred by the law; or
  (c) the loss or injury results from violation of an interest worthy of legal protection.

(2) In any case covered only by sub-paragraphs (b) or (c) of paragraph (1) loss or injury constitutes legally relevant damage only if it would be fair and reasonable for there to be a right to reparation or prevention, as the case may be, under Articles 1: 101 (Basic rule) or 1: 102 (Prevention).

(3) In considering whether it would be fair and reasonable for there to be a right to reparation or prevention regard is to be had to the ground of accountability, to the nature and proximity of the damage or impending damage, to the reasonable expectations of the person who suffers or would suffer the damage, and to the consideration of public policy.

[8] "The second chapter does not seek to draw up a list of abstract interests protected by the law of tort; rather it seeks to clarify within the specific context the concept of "legally relevant damage" within the meaning of basic norm – (…) damage which will be recognized for the purpose s of founding liability in tort, given all the other ingredients of claim." (Von Bar, 2009, p. 299)

(4) In this Book:
(a) economic loss includes the loss of income or profit, burdens incurred and reduction in the value of the property
(b) non-economic loss includes pain and suffering and impairment of the quality of life.

The analysis of these provision first shows that there are two manifestations of damage - loss and injury *per se*; then, that they can result from the violation of one's subjective right or legally protected interest. Protected are only such rights which enjoy protection against everyone, therefore anyone can infringe them. In the civil law legal system these rights are called absolute rights and include property rights, personality rights, trademarks rights and copyright. Their exclusive nature gives them a special status, among other things, noticeable in privileged protection in tort law. It need not be a right within the private law, and the right to vote, or a right not to be discriminated against are also included (see: Von Bar, 2009, p. 307). What matters is that these rights have the *erga omnes* effect, therefore contractual rights are excluded[9].

Infringement of legally protected interests can also constitute legally relevant damage. The drafters used the expression '*an interest worthy of legal protection*'[10] (art. 2: 101 para 1 subpar b) and, whether there is such, the court will decide using criteria set in paragraphs 2) and 3). Before we examine these criteria, we will first explore loss and injury as two manifestations of legally relevant damage.

LOSS AND INJURY AS DAMAGE

The drafters followed the dominant European legal tradition by making both economic (material) as well non-economic (non-material) loss compensable (art. 2: 101 para 1 of PEL Liab. Dam.). In order to establish whether there is an economic loss, one must compare the current material position of the injured person with his/her material position prior to the event which caused the damage; if there is a reduction in the property value (negative difference between the compared positions), the injured party has a right to reparation, either in kind or in money (the last

[9] But, an inducement to breach a contract is a special instance of legally relevant damage (see art. 2: 211 of PEL Liab. Dam.) for a third person has intentionally caused one contracting party not to perform his/her obligation.

[10] This is a linguistic innovation which does not feature in any of the Civil Codes or Damage Liability Acts, but it is known in jurisprudence of many countries. In Serbian law often it is required from a claimant to prove his legitimate interest in order to address the court and ask for legal protection (according to art. 188 of the Civil Procedure Act, a claim to establish an existence or non-existence of a right or legal relationship can only be brought in special situations provided that the claimant has legal interest).

called compensation). The aim of the reparation is to reinstate the injured person in the position that he/she would have been in had the legally relevant damage not occurred (art. 6: 101 para 1 of PEL Liab. Dam.). Unlike the Serbian obligation law, where reparation in kind has priority over monetary compensation (see art. 185 para 2 and 3 of Act on Obligation Relationships), PEL follows the common law principle and establishes reparation in money as a general rule. The amount of the sum will be assessed according to the economic rules of the market for the harmed interest has a market value. In art. 2: 101 para 4 typical forms of economic losses are given. They include the loss of income or profit, the burdens incurred and reduction in the value of the property.

There are situations where reparation in kind is a better remedy than monetary compensation. The owner of a stolen thing has a right to vindicate it for only such a reparation reinstates him in the position held prior to the damage suffered. Yet, the main field of reparation in kind is the infringement of personality rights. This leads us to the second manifestation of reparable loss, namely non-economic loss, which includes pain and suffering and the impairment of the quality of life (art. 2: 101 para 4 subpara b).[11] These losses cannot be assessed according to the rules of the market for the infringed rights and interests have no market value. The satisfaction of the injured person is the aim of the remedy, which can be achieved by reparation in kind, as well as by payment of money. For example, the injuring person is obliged to retract a false statement, the court orders that judicial decision is to be published in the media (at the expense of the injuring person). If monetary compensation is a remedy, then the injured person will be given the amount of money assessed by the judicial decision. This is by no means an equivalent of the harmed right, but rather an equitable sum which can alleviate the pain and suffering of the injured person.[12]

At the beginning of our discussion it was said that the tort law deals with the consequences of wrongdoing, meaning that in order to establish liability in tort there has to be some detrimental effect on the person's patrimonial or personality rights or protected interests. "Incurring loss is a generally prerequisite for the existence of legal damage" (Von Bar, 2009, P. 320).[13]

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[11] The list is not conclusive therefore one must address the national law in order to establish which types of non-economic damage are recoverable. In the Serbian law there are three types of legally recognized manifestations of such damage: physical pain and suffering, mental pain and suffering and fear (Zakon o obligacionim odnosima, čl. 200, st. 1).

[12] See also art. 200 para 2 of Serbian Act on Obligation Relationships.

[13] Otherwise, tort law will lose its dominantly reparatory function and gain elements of punishment and deterrence, which are the goals of criminal law sanctions.

Yet, there are legal systems where the injury alone (*per se*) constitutes legally relevant damage. We have already mentioned the Italian concept of *danno biologico*, which is a good example of one such damage. According to the Italian court practice, the violation of a person's psycho-physical integrity and health (which enjoy special constitutional protection) is not only an event that causes further damage, but an event which *per se* justifies the obligation to make reparation to the injured party. Therefore, no special proof of actual loss (being economic or non-economic) is required for tort liability.

We can also add the Spanish rule that an infringement of constitutionally protected personality rights, above all bodily integrity, honor, one's own name or image and privacy, are actionable *per se*. In France, the breach of the prescribed standard of conduct, such as a duty to fair and loyal market competition, presumes the presence of damage if *faute commerciale* is established (for further reading see: Von Bar, 2009, P. 320-323).

THE CRITERIA FOR ESTABLISHING LEGALLY RELEVANT DAMAGE

Article 2: 101 of PEL Liab. Dam. applies to those rights and legally protected interests which are not regulated by special provisions of the Draft, and it must be further developed in court practice. The Court dealing with the case is equipped with the criteria set in paragraphs (2) and (3) of the said article, which will help him to establish the presence of legally relevant damage. According to paragraph (2) a claimant will be granted a remedy only if it is *fair and reasonable* to do so, otherwise the infringement of a right or interest does not constitute legally relevant damage. Fairness and reasonable are decided upon: *the ground of accountability, the nature and proximity of the damage or impending damage, to the reasonable expectations of the injured person and to the considerations of public policy* (paragraph (3)). The assessment of public policy may show that there are better and more suitable legal means to deal with the infringement than those given in tort law. For example, non-performance of an obligation only seldom constitutes non-contractual liability (if it is induced by a third person) for contract law has its own ways of dealing with the breach of contract and has priority over tort law regime.

CONCLUSION

The law of tort deals with the detrimental consequences which arise out of damage caused to another by prescribing rules which, if satisfied, give an injured person the right to reparation of that damage. The concept of damage is familiar to most European legal systems, but it is rarely defined in their civil codes. Law theory says that damage is a loss a person suffers against his/her will which is caused to his/her rights

or legally protected interests and is to be removed by a person who caused the loss or is in another way responsible for it. The Study Group on European Civil Code uses the expression *legally relevant damage* to denote what is to be classified as damage for the purpose of tort law. Although the expression is new it also focuses on these important features of one's loss for which a legal redress is provided under the tort law; the prefix "legally relevant" delineates damage in the legal sense from those detriments which one individual perceives to be damage, but are actually not. There are eleven particular instances of legally relevant damage and one general rule containing the criteria for establishing tort liability for those infringements which are not specially addressed. These criteria are placed in the judge's hands to ascertain the presence of damage and are to be used subsidiary. The judge must establish the infringement of right or interest worthy of legal protection and that circumstances of the case show that it is *fair and reasonable* to grant a remedy, because if not, the infringement does not constitute legally relevant damage.

At the end of this analysis, we would also like to point out that not every legally relevant damage is reparable. Chapter 6 of the PEL Liab. Dam. makes remedies for the damage sustained depending on the aim of tort liability. The general aim is the restoration into the previous state of affairs (*restitutio in integrum*), which is to be achieved by way of reparation, compensation (monetary reparation) and prevention. In cases where only preventative legal protection can be given, it is justified to say that although legally relevant damage is present, it does not also constitute a reparable damage. Then a claim for compensation for example of pain and suffering may be dismissed by the court on the basis that *it would not be fair and reasonable for there to be a right to reparation.*

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ПРАВНО ЗНАЧАЈНА ШТЕТА

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Резиме

Није сваки губитак штета. Сви правни системи разликују појмове губитка (оштећења) и штете и не поистовећују их. Неки су губици надокнадиви по правилима одштетног права, јер се сматрају штетом, друге мора да поднесе сâм оштећени. Разграничавањем губитака од штете, те приписивањем правне одговорности само за ово друго – одштетно право (и читав правни систем) – чува само себе од урушавања. Тиме се и спречава ширење одговорности за последице сувише удаљене од радње на коју су се надовезале.

Студијска група за Европски грађански законик појмом правно значајна штета одредила је један од општих услова одштетне одговорности. У сазнавању овог појма треба поћи од издвојених и појединачно уређених облика штете, а општу и уводну одредбу применити супсидијарно – уколико повређено субјективно право или заштићени интерес не спада ни у један од посебних облика штете. Оваквим распоредом правила треба избећи погрешан утисак да се листа затвара са ових једанаест врста штета, без могућности заштите и других правних добара. На листу се могу додавати и друге врсте штета, и то на основу критеријума из члана 2: 101, чије ће постојање утврђивати суд у сваком конкретном случају. Норма о правно значајној штети из члана 2: 101 Нацрта заправо је бланкетно правило, које тек треба операционализовати у судској пракси.

Уколико погледамо одредбе Нацрта у којима су уређене посебне врсте штета, закључићемо да се ради о типичним повредама права и интереса, у већини европских права санкционисане одштетном одговорношћу. Првих неколико врста штета настаје повредом личних права. Реч је о штетама због смрти или повреде психофизичког интегритета друге особе, због повреде части и угледа или права на приватност, изношења или проношења неистинитих информација о другом и због повреде односа поверења. Следе штета проузрокована повредом стварних права и интереса, штета због основаног поуздања у савет или информацију за које у тренутку саопштавања оштећени није знао да су нетачни, штета причињена нелојалном конкуренцијом и неколико врста еколошких штета.

Мимо ових, посебно издвојених, права и интереса, одштетном одговорношћу заштићена су и друга права и интереси (било уређена нормом грађанског права или нормом јавног права), но само по процени судије и уз испуњење додатних услова. Најпре, потребно је да се ради о праву апсолутног дејства – таквом које делује према свима, па је и према свима заштићено – или о правном интересу достојном правне заштите, затим и да је оправдано и разумно признати титулару повређеног права или интереса право на надокнаду штете. Оправданост и разумност примене ове санкције процениће судија имајући у виду облик одговорности за повреду, природу штете, блискост штете и радње која ју је изазвала, оправдана очекивања оштећеног и, напослетку, јавни интерес. Укључивање јавног интереса у процену даје судији простора за закључак да се повреда може боље отклонити другим правним средствима и по другим правним правилима, уместо одштетних. У таквом случају, судијски је закључак да нема правно значајне штете (legally relevant damage), већ повреде другим нормама санкционисане или чак губитка који оштећени мора сам поднети.

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MORTGAGOR'S LIABILITY FOR THE PRESERVATION OF THE VALUE OF A MORTGAGED REAL ESTATE [a]

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Abstract

In this paper, the authors analyze the civil law liability of a mortgage debtor (mortgagor) in cases where the debtor breaches the obligation of treating the mortgaged real estate in compliance with the legal standard of acting with due diligence of "a good host" or "a good businessman," and thus depreciates its value to the extent that jeopardizes the possibility of enforcing the claim. Given the accessory nature of mortgage which is aimed at securing the claim as the primary right, this form of civil liability and the corresponding rights of the mortgage creditor (mortgagee) are applicable before raising the issue of traditional civil law liability, which implies the maturity of the receivables and compensation for the damage sustained by the creditor. This form of civil liability may also be used preventively when there is a real risk of causing damage to the mortgagee. The relationship between civil law liability and the insurance of the mortgaged asset implies that they do not exclude but complement each other.

Key words: civil liability, mortgage, depreciation of real estate value, value preservation, insurance.

ОДГОВОРНОСТ ХИПОТЕКАРНОГ ДУЖНИКА ЗА ОЧУВАЊЕ ВРЕДНОСТИ ЗАЛОЖЕНЕ НЕПОКРЕТНОСТИ

Апстракт

У раду анализирамо грађанскоправну одговорност хипотекарног дужника у случају када прекрши обавезу поступања са заложеном ствари по правном стандарду „добар домаћин", односно „добар привредник", и умањи њену вредност у мери да угрози могућност намирења потраживања. Пошто је хипотека акцесорне природе и у функцији је обезбеђивања потраживања као главног права, ова одговорност и одговарајућа права за хипотекарног повериоца делују пре наступања класичне грађанскоправне одговорности (која подразумева доспелост потраживања и штету за

[a] Рад је резултат истраживања на пројекту *Усклађивање права Србије са правом Европске уније*, који финансира Правни факултет Универзитета у Нишу.

повериоца). Она се може користити и превентивно, када постоји реална опасност наступања штете за хипотекарног повериоца. Однос грађанскоправне одговорности и осигурања заложене ствари указује на то да се оне не искључују, већ допуњују.

Кључне речи: одговорност, хипотека, очување вредности, умањење вредности предмета хипотеке, осигурање.

INTRODUCTION

The contemporary legal system has been adapting to the modern lifestyle which is fraught with ample risks, leading to frequent violations against natural persons and their property in various social relations. Such circumstances call for the establishing of the new forms of liability in civil law, as well as in criminal law, misdemeanour law and administrative law. In the 20th century, the legal response to the constant expansion of different types of liability was the acceptance of objective liability, i.e. strict liability regardless of fault. It was followed by the expansion of preventive liability.

The application of property-related sanctions to diverse legal relations, ranging from the protection of property rights to the protection of personal (non-property) rights, has been expanding. Protocol No. 4 to the European Convention on Human Rights (ECHR)[1] obliges the signatory states to envisage property-related sanctions as the only ones applicable in civil law relations[2]. The classification of sanctions into preventive and reparative is particularly important. Reparative sanctions include "the instruments of direct coercion, the instruments of indirect coercion, and reparations according to the equivalence principle [...] Civil law sanctions, imposed on such grounds, should enable that personal goods and/or property of a specific person are restored to the position they would most likely have had if they had not been endangered or damaged. In effect, these sanctions aim to ensure *resitutio in integrum*" (Nikolić, 1995: 98).

Changes in the legal entities' assets "may be a consequence of many various facts, some created by the stakeholders' will, most frequently manifested in the form of a contract, but some of them emerged independently of their will or even contrary to it" (Simonović, 2013: 106). However, civil law liability cannot be limited only to tort law or only to the reactive protection after the violation. Preventive protection has been increasingly expanding as well. Preventive actions are primarily aimed at eliminating the risk of the occurrence of damage. Civil law liability also

[1] Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto, ETS No.046, Strasbourg, 16/09/1963; https://www.echr.coe.int/Documents/Library_Collection_P4postP11_ETS046E_ENG.pdf

[2] Protocol No. 4 (Article 1) provides that "No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation."

includes diverse forms of protection of parties against non-performance of any contractual or statutory obligation.

In addition to liability for damage, the application of additional security instruments has also been expanding, such as personal[3] and real[4] securities (including mortgage), which supplement the debtor's property-related liability "by increasing the likelihood that the creditor will really satisfy his claim" (Medić, 2013: 7). The liability for the preservation of a mortgaged real estate value is an attempt of preventive assurance of property-related sanctions enforcement.

The topic of this paper is the mortgagor's liability for the preservation of the mortgaged realty value from the moment the mortgage is established to the moment it is extinguished. We analyse property-related liability as a specific substantive law relation in the context of mortgage which is used as an accessory instrument for the purpose of securing a claim. In order to analyse this aspect of liability, we first deal with the general civil law liability issues which have to be taken into account in considering the specific position of the owner of mortgaged realty, who is in the position of a mortgagor (debtor), and his liability for the preservation of the mortgaged realty value. However, prior to pursuing the traditional property-related liability of the mortgagor for the non-performance of his obligation, the mortgagee (creditor) has at his disposal the security instruments which are aimed at the mortgaged asset in possession of the mortgagor (debtor).

1. THE CONCEPT AND TYPES OF LIABILITIES

In general, legal liability is a consequence of unlawful conduct. Thus, depending on the type of the violated legal norm, there are criminal, administrative and civil delicts, and the corresponding liabilities thereof. The common characteristics of legal liability are described as follows: "they are sanctions for the violation of law; they contain social condemnation of the responsible person's conduct, and they are manifested in certain negative consequences for the responsible person" (Radišić, 2014: 198,199).

Pursuant to the Obligations Act[5], "Parties to an obligation relationship shall be bound to carry out their obligations and shall be responsible for the

[3] For instance, a joint and several warranty is a personal collateral, which essentially entails multiplying the debtors, i.e. the properties of two persons: the debtor and the warrantor, from which the property-related sanction can be enforced.

[4] Beside property-related sanctions, the debtor or a third person pledges a specific object from which the mortgagee (creditor) can be satisfied.

[5] Zakon o obligacionim odnosima [Obligation Relations Act, 1978], *Službeni list* SFRJ, br. 29/78, 39/85, 45/89; available at https://www.mpravde.gov.rs/files/The%20Law%20of%20Contract%20and%20Torts_180411.pdf

performance thereof" (Art. 17). "The liability comes to the fore only if the debt has not been voluntarily paid, if it is collected with the assistance of state enforcement bodies" (Radišić, 2014: 34). However, such an obligation is present in any legal relationship in real property, succession and family law. Therefore, property-related sanctions, with some adjustments in the form of natural and monetary restitution, are suitable for all legal relationships. If the titleholder of obligation (debtor, mortgagor, etc.) does not perform their obligation voluntarily, the legal order offers specific enforcement instruments to the titleholder of the rights (owner, creditor, mortgagee, etc.).

Depending on the legal ground it rests upon, civil liability is basically classified into contractual and non-contractual liability. Contractual liability is based on the breach of contractual or statutory obligations within a legal relationship which has been created before the damage occurs. Non-contractual liability arises at the moment of causing damage in situations that do not involve a special legal relationship between the tortfeasor and the injured party (the person who sustained damage), due to the violation of the general ban not to cause harm to another (*neminem laedere)* (Radišić, 2014: 201, 202).

Although liability is a typical feature of obligation relations, it is a much broader category. "The problem of liability has become an issue of primary, theoretical, and practical importance; it is the first and foremost point of the civil law, constantly gaining ever increasing significance worldwide. However, apart from being constantly developed and reinforced, liability increasingly encompasses new legal relations; it arises from various sources in diverse aspects of life, in all legal areas; [...] liability has evolved in both quantitative and qualitative terms [...]" (Josserand, 1992: 1164, 1165). In contemporary civil law, the expansion of subjective liability has led to establishing objective liability regardless of fault (*culpa*). "The demand for citizens safety constitutes a relevant legal policy motif for introducing and increasing the number of special laws (*lex specialis)* which envisage the so-called objective liability regardless of fault (strict liability) for specific types of damage in tort law" (Stojanović, 1992: 1188).

Preventive protection has also been expanding for the sake of damage prevention, where an application for the elimination of danger/risk can be filed only when there is imminent danger of the occurrence of damage. "The legal ground for liability of a holder of any source of danger lies at the very danger of an occurrence of significant damage; therefore, it is an obligation lawsuit... Besides, under the Obligations Act (Art. 156), one is held liable for the presence of risk of causing more substantial damage (not for the actual damage that has occurred); thus, it provides for the exercise of the preventive function in law and precludes the occurrence of great damage" (Kovačević Kuštrimović, 1992:1238).

Property-related sanctions are characteristic for all types of civil law relations in contract law, tort law, real estate law, succession law, etc.

Bearing in mind the position of the owner of the mortgaged asset, we are interested in the damage that virtually occurs to the mortgage creditor (mortgagee) due to the diminished value of the mortgaged estate. This damage may occur through commission, omission to act, or the possible abuse of ownership or other property rights by breaching a contractual or statutory obligation. Under the general liability rules, the mortgagee may invoke contractual liability for damages only after the maturity of the claim. However, beforehand, they are availed legal instruments that they have received on the grounds of mortgage as a real security. These instruments are the subject of analysis hereinafter.

Therefore, the mortgagor's liability is the consequence of inobservance of the statutory and (most frequently) contractual obligation of safeguarding the mortgaged asset. The statement that "the claim for damages referred to in the contract is due for payment at the moment when the performance of obligation was about to ensue, and even where the impossibility of its performance has occurred earlier" (Radišić, 2014: 205) is not valid because it does not entail a traditional claim for damages, but preventive civil liability resting on mortgage. Civil law sanctions based on mortgage have an immediate preventive effect, irrespective of the maturity of claim.

2. THE LEGAL POSITION OF A MORTGAGEE AND A MORTGAGOR REGARDING THE PRESERVATION OF THE MORTGAGED REAL ESTATE VALUE

A mortgage is a security interest on an immovable property. Beside ensuring the debtor's property-related liability, it additionally secures the creditor in the event that the debtor does not pay the debt upon the maturity of claim, by providing the possibility to collect the claim by selling the mortgaged asset. The mortgage is operative in the sphere of liability; at first, it exists as a possibility ("latently, potentially"), and it may only be activated if this "psychological" pressure of the mortgage remains ineffective and the maturity of the claim and the debtor's default take place (Stojanović, Pop-Georgiev, 1989: 232). Therefore, in legal theory, the mortgagee's authorisations are clearly distinguished in two phases designated as the "security phase and settlement phase" (Hiber, Živković, 2015: 249).

The function of the security phase is to "preserve" the value of the mortgaged asset and protect it from possible risks that may jeopardise the future enforcement of the mortgagee's claim. In this phase, before the enforcement right has taken place, the mortgagor/debtor's liability to

preserve the value of the mortgaged asset and the corresponding[6] rights of the mortgagee (creditor) is the most important. Although this phase seems to be "static", mortgage may take effect within this phase owing to the debtor's liability to manage the property with due diligence.

In the settlement phase, the sale of the mortgaged asset and the collection of the claim take place. Thereby, the psychological pressure of the mortgage becomes a reality (*in cauda venenum).* After the maturity of the claim and the debtor's default, the mortgagee (creditor) may opt for one of the two available legal actions for the enforcement of their claim: to file a lawsuit under the law of obligations for the compensation from the debtor's property and/or to file a lawsuit under real property law for the compensation from the mortgaged asset. The mortgagee may also file both actions, either simultaneously or one after another, if they cannot fully satisfy their claim on the basis of one; these options are provided in view of the fact that the stated grounds are not contradictory and mutually exclusive (Capelle, 1963: 101; Soergel and Siebert, 1968: § 1147).[7]

For the mortgagor (debtor), the mortgage implies a restriction to property and primarily creates specific obligations. For the mortgagee (creditor), the mortgage is predominantly manifested as a set of rights, mutually conditioned and aimed at achieving the same goal - the preservation of the mortgaged property value and the right to enforce the claim. However, given the fact that it is an accessory right, the mortgage cannot be viewed on its own, but only in conjunction with the claim it secures. The true purpose of individual authorisations and obligations can be seen only when considered in such a way. The legal position of the mortgage parties in terms of preserving the mortgaged asset value depends on the mortgagor's duties and the corresponding rights of the mortgagee.

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[6] Although there is no full correlation between these real property law authorisations and obligations which is apparent in the law of obligations (contracts and torts), some of these authorisations and obligations are most approximate to real property relation, considering that they are regulated by the law and aimed at accomplishing the same goal - the preservation of the mortgaged asset value. It is common knowledge that, in the so-called *iura in re aliena*, there are two parties within a legal relationship, with authorisations and obligations which are correlated in a similar manner as obligation rights (e.g. the right to access and the obligation to enable access to the mortgaged asset), whereas third persons have an obligation to refrain from violating the real right.

[7] In the Serbian law, the mortgagee may request that their mature claim is satisfied as follows: 1) first, from the mortgaged real estate value and, then, from the debtor's remaining property; 2) simultaneously from the mortgaged real estate value and from the debtor's property; or 3) first from the debtor's property and only after that from the mortgaged real estate value (Art. 25, Mortgage Act). Zakon o hipoteci [*Mortgage Act, 2005*], *Službeni glasnik RS*, br. 115/2005, 60/2015, 63/2015, 83/2015.

2.1. Mortgagor's Obligations

No property authorisation of the owner of a mortgaged property is fully absorbed by the establishment of a mortgage, but some of them are restricted. The mortgagor keeps all the attributes of ownership over the mortgaged asset (to hold the object; to use it; to collect and enjoy the fruits thereof; to sell, lease, pledge it, etc.); in principle, for undertaking such legal actions, they do not need the consent of the mortgagee as their rights are not restricted (Art. 16, Mortgage Act)[8]. Therefore, the owner of the mortgaged property is encumbered by a set of obligations which restrict some of these authorisations. The basic obligations of the mortgagor in terms of preserving the mortgaged property value are as follows:

2.1.1. The owner of mortgaged real estate may not make any physical changes in the object of mortgage without the creditor's written consent (Art. 17, Mortgage Act). This means that the owner cannot perform any works that change the factual state of the real estate (e.g. making partition-walls, making additions, demolition, joining, partition, etc.). The mortgagee may refuse to grant their written consent for such works on reasonable grounds only, i.e. if there is any danger that the value of the mortgaged asset will be reduced thereby. In case of a dispute, it would be subject to judicial determination, on the basis of findings of an expert of adequate profession. We deem that these rules are accordingly applied in the event where the debtor wants to change the purpose of that object.

2.1.2. The owner shall look after and maintain the object of mortgage as expected of a good host (natural persons) or a good businessman (legal persons). This obligation aims to avoid the depreciation of the real estate due to the owner's actions or omissions to act (Art. 17, para. 1 and 2, Mortgage Act). This duty is not considered to be "difficult" to perform as it is in the owner's interest[9], and it exists whether or not the owner or a third person is the direct holder of the mortgaged asset.

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[8] In contrast, the Act on the Right of Pledge on Movable Property and rights registered in the Pledge Registry (art. 24) permits that the pledge agreement may exclude the right of the pledgor to dispose of the object of pledged right. This possibility is justifiable because the provision refers to a movable asset which, as a matter of fact, may be more difficult to track than real estate. Zakon o založnom pravu na pokretnim stvarima i pravima upisanim u registar [*Act on the Right of Pledge on Movable Property registered in the Pledge Registry, 2003*], *Službeni glasnik RS*, br. 57/2003, 61/2005, 64/2006, 99/2011.

[9] Such treatment of the asset is expected of any owner as it is in their own interest, but after the establishment of mortgage such behaviour is their duty. They must refrain from any actions representing a non-economical and irrational treatment of the mortgaged object, which they would have been entitled to as the owner even if there was no mortgage.

The depreciation of the mortgage property value may be performed by means of a legal action or factual conduct of the mortgagor, or a holder of the mortgaged property. Such a value depreciation by means of a legal action would occur in cases where the establishment of some permanent right would reduce the mortgaged object value at the moment of the maturity of claim (e.g. real easements on the mortgaged object as a servient estate or urban land consolidation (Lazić, 2017b:365). However, the creditor is also protected from legal actions by the right of priority; thus, any subsequently established right has no priority. Therefore, this priority protection is primarily intended for the control of factual actions of the holder against the object of mortgage. The depreciation of value by a factual action of the holder is possible, for example, by omitting to prune or over-pruning grapevines in vineyards, failing to maintain the rooftop structure, and alike. It is not required that the depreciation of value is caused by the owner, but it is enough that there is a casual link between the debtor's action and the depreciation of value.[10] Yet, in order to invoke this type of liability, the debtor's conduct must be unconscientious, i.e. contrary to the legal standard of acting as a good host or a good businessman.[11] In order to activate the mortgagee's protective rights in relation to the mortgaged asset, it is necessary to prove that the full enforcement of claim is jeopardized.

We consider that the rules regulating the obligations of a lease-holder of real estate may accordingly be used for regulating the legal position of the mortgagor (debtor). Under the Obligations Act (Art. 581), the lease-holder is bound to use the object as a good businessman or as a good host, as stipulated in the contract or in accordance with the purpose of the object. The lease-holder is liable for the damage that may occur in the course of using the leased object, particularly if the use is contrary to the contractual provisions or to the purpose of the object, regardless of the person who has been using the object, either the lease-holder himself or a person acting under their order (e.g. a subleasee). On the one hand, the mortgagee is the owner of the mortgaged property (not a lease-holder); thus, some of his authorisations are broader than those of the lease-holder; on the other hand, their position in terms of the authority to hold and use the property is similar to the position of a lease-holder (a property encumbered by mortgage). Both the mortgagor and the lease-holder are entitled to use the object not only as an authorisation but sometimes also as an obligation. "In principle, the lease-holder is not obliged to use the

[10] This is similar to objective liability regardless of fault (strict liability) for the compensation of damage.

[11] These procedural standards enable the creditor to impose various contractual obligations on the owner, such as the duty to insure the servient asset against usual risks (which is a statutory obligation envisaged in the Mortgage Act), to maintain the asset in good conditions, to preserve the purpose of the object, etc.

object; it is sufficient that he pays the lease and fulfil the other obligations referred to in the lease agreement. The obligation to use the object may be envisaged in the lease agreement (e.g. the lease-holder is obliged to drive the leased car and to pass the specified number of kilometres per month); the obligation may also arise from the nature of the object (a cow must be milked otherwise it may get sick) or it may be envisaged by imperative norms" (Blagojević, Krulj, 1983:1461). We deem that this also accordingly applies to the owner of the mortgaged object; the mortgage restricts the owner's autonomy to use the object to the extent needed, to preserve the value of the mortgaged object.

When it comes to the lease agreement, "using the object as a good host means acting with due diligence of a caring and meticulous person, equal to the care given to their own belongings. It may require a higher degree of care by the lease-holder than the care they demonstrate towards their own belongings. On the other hand, the lease-holder cannot use the object contrary to its purpose. The lease-holder's obligation to use the object as a good host is limited by his obligation to use the object according to the purpose of the object; [...] both obligations have the same goal: to preserve the leased object so that the lease-holder may return it undamaged to the lessor upon the expiry of the lease period" (Blagojević i Krulj, 1983:1461). Just like the lease-holder, the mortgagor cannot change the purpose of the mortgaged property without the mortgagee's consent; the mortgagee can refuse it on justified grounds, such as the depreciation of the object's value.

2.1.3. The obligation to insure the object of mortgage. The correlation between insurance and liability will be discussed later on in this paper.

In addition to the obligation of keeping the object of the pledged right, the Act on the Right of Pledge on Movable Assets Registered in the Pledge Registry (art. 18) envisages the obligation "to keep the object of pledge right in a good condition and make the required repairs." It also provides that the pledge agreement may limit or prohibit, as well as stipulate the way in which the pledger may use the object of pledge right (art. 26). We deem that such conception of obligations is not redundant, although in mortgage relations it arises from the established standard of care about the mortgaged object.

2.2. The Right of the Mortgagee Concerning the Preservation of the Value of the Mortgaged Object

The creditor's right to the protection of interest in the case of depreciation of the value of the mortgaged object before the maturity of the claim should prevent the actions of the owner or the holder of the mortgaged object that depreciate its value to the extent that jeopardises the future collection of the entire claim. Since the owner of the mortgaged

object is entitled to perform the property authorisations on the mortgaged object, it was necessary to ensure the mortgagee the legal protection aimed at precluding the damage. It entails the preventive protection against the harmful actions of the debtor, irrespective of whether there is only a risk of depreciation or whether the depreciation of the object's value has already occurred, because these rights are exercised before the maturity of the claim and the possible occurrence of damage in terms of law on contractual and non-contractual obligations. The mortgagee also has the right of access to the mortgaged estate and the right to take action to prevent the depreciation of the object's value.

2.2.1. The right of access. The right of access authorises the creditor to enter the real estate regardless of who is in it (the owner or lease-holder) for the purpose of exercising control over its maintenance or for other justified reasons. This is a statutory authorisation (Art. 17, Mortgage Act) but it may also be determined and precisely defined in an agreement, or a mortgage deed. The right of access to the real estate cannot be exercised out of business hours (from 22:00 to 07:00), or at the time of state holidays. We also deem that it should not be exercised at the time of religious holidays, if it would disturb the debtor's peace and tranquility. It is aimed at preventing the abuse of rights by the mortgagee. The owner, lease-holder and any other direct holder of the mortgaged property is obliged to cooperate with the creditor and to enable access to the mortgaged property (e.g. entry into an apartment, etc.).

The establishment of the depreciation of value or any threat of depreciation is a preliminary phase, after which the creditor may pursue some of the rights envisaged in the event of endangering the value of mortgaged objects. The depreciation of the mortgaged object is established by the competent court in non-contentious proceedings envisaged for securing evidence, upon the request of the creditor (Art. 18, para. 3, Mortgage Act). Namely, the property value should be depreciated to the extent that there is a real danger/risk that the sale of the mortgaged asset may not fully satisfy the entire claim secured by mortgage. The presence of risk concerning the creditor's interest depends on the percentage of depreciation or expected depreciation of the object's value, but also on the size of the remaining debt at the moment of the filing of the request, the mortgage rank, etc.[12]

[12] In banking business practice, when establishing the amount of credit covered by mortgage security, the accepted object of mortgage is any mortgage asset that covers the amount of the entire claim it secures (costs + interest + principal) with a maximum of 75% of the value, considering that the creditor does not want to risk the impossibility of collecting the claim after the sale of mortgaged asset (See: Lazić, 2009a:110).

2.2.2. The rights concerning the prevention of value depreciation. There are two rights available to the mortgagee aimed at preventing the value depreciation of mortgaged property: the right to additional security, and the right to seek termination of detrimental actions. Although the legislator did not specify the order of actions for the protection of value depreciation, thus enabling the mortgagee to file the request that they find the most efficient, we consider that the right to seek termination of detrimental actions should be envisaged as the first request.

▪ *The right to request a supplementary collateral of a* "*similar degree of security*" (Art. 18, Mortgage Act)

Additional security is, practically, the right to supplement the mortgage. If the value of the mortgaged object is depreciated by the owner's or the direct holder's legal actions, and if the debtor does not provide supplementary security which is requested due to the depreciation of value of the mortgaged object, the creditor may seek premature collection[13] of the entire claim.

We deem that the right to supplement the mortgage should also be envisaged in the event when the mortgaged object has a legal or material deficiency. Thus, the Croatian legislation (Art. 328, Act on Ownership and other Real Rights) envisages the corresponding application of the liability rule on defects of the objects. Anyway, the right to supplement the security instrument is envisaged in the pledge if the object has a material or legal defect and jeopardises the collection of receivables (Art. 979, Obligations Act). Considering that the pledge is an onerous contract,[14] the pledger is liable for material and legal defects of the rented object.

As it is hard to provide "similar" security in practice (mortgage on another real estate), it seems that the creditor quickly proceeds to the request for premature sale and the collection of receivables. It is up to the courts to correctly apply these provisions, which may significantly endanger the debtor's and mortgagor's positions if they are not one and the same person.

▪ *The right to seek a court order that the owner or actual holder terminate the detrimental action* (Art. 19, Mortgage Act)

We consider that this should have been envisaged as the first request but, under the law, it is up to the creditor's will to decide whether

[13] This entails the right to premature sale and collection of receivables, not only the sale and deposition of the amount with the court until the maturity of receivables, as it is the case with pledges (Art. 982, Obligations Act).

[14] "A pledge contract *per se* is not an onerous contract. However, given that a pledge contract is concluded for the purpose of securing claims from another contract (most commonly from a loan agreement); in that wider context, pledging things is a compensation for what the pledgor receives (money on loan)"(Blagojević, Krulj, 1983: 2079).

they will file such a request beforehand or not. The request asking the court to order the owner to terminate the detrimental action is similar to the request in *actio negatoria*. This authorisation may be used both in cases where the value of the real estate has already been depreciated, and preventively, if there is a real danger of value depreciation.[15] However, if there is only a pending risk/threat, acting upon the request of the creditor and without prior assessment of the value depreciation, the court may allow the creditor to undertake the measures necessary to avoid the depreciation of the value of the mortgaged object (Art. 19, Mortgage Act). Exceptionally, the law authorises the mortgagee to independently undertake (without seeking the court's permission) the measures for the prevention of the depreciation of the value of the mortgaged object, if there are circumstances calling for urgent action (urgency). We deem that this provision is hardly applicable in practice, considering that the object is in the possession of the creditor and that the mortgagee is hardly likely to give consent to undertaking actions without the court's decision. On the basis of a subsequent decision of the court, which would have to establish the necessity of their undertaking these actions, the costs of such actions shall be borne by the mortgagor.

With reference to comparative law, in the event where the mortgagor depreciates the value of the mortgaged object, we consider that the mortgagee should also be acknowledged the right to request the court to order the sequestration of the mortgaged real estate into the possession and management of a third party.

3. THE RELATION BETWEEN THE INSURANCE OF THE MORTGAGED OBJECT AND CIVIL LAW LIABILITY

The Mortgage Act (Art. 17) establishes the duty of the owner to insure the object of mortgage (mortgaged asset) against all usual risks for that type of object, prior to the conclusion of the mortgage agreement. In practice, the mortgagee conditions the mortgagor with the duty to insure the object of the mortgage and "vinculate" (link) the insurance policy to the creditor's name[16] in order to ensure that they would approve the credit. We consider that this legal obligation should be stipulated in the contract, as it would enable mortgagees to use it when needed.

[15] The German Civil Code (*Kommentar zum Bürgerlichen Gesetzbuch*, §1217) guarantees the creditor the rights in case there is a risk of deterioration and in case of actual deterioration of the mortgaged real estate.

[16] In case of damage stemming from the insured event, the insurance amount is paid to the mortgagee, unless they agree that the amount is paid to the object owner who regularly pays the debt. If the debt is not paid regularly, the mortgagee may request the collection of debt from the insurance amount.

Compulsory insurance, which is sometimes quite unnecessary, increases the costs of lending. Alternatively, this insurance issue may also be resolved by allowing the mortgagee to contract the insurance of the mortgaged object against certain harmful events in his favour but at the cost of the owner of the mortgaged object.[17]

The insurance rules are regulated by the Insurance Act and relevant by-laws. The statutory or contractual[18] obligation to insure the mortgaged object plays a significant role in the procedure of securing the mortgagee's claim (receivables), both in relation to the depreciation of the mortgaged object value and in the event of loss of the mortgaged object. There are numerous questions on the position of the mortgagee and debtor in relation to the occurrence of the insured event.

First, we will consider the relation between insurance and civil law liability. Although initially created for different purposes, insurance and liability have eventually arrived at the same objective: to ensure the compensation for the damage caused by risks threatening a person and their property in modern life. "In a short while, both institutes have covered the same domain, but their goals are different: the goal of liability is to impose the burden of compensation on the tortfeasor, while the goal of insurance is to relieve him of this burden. Yet, both parties ultimately achieve the same goal - compensation for damage to the injured person" (Šulejić, 1992:2255).

Insurance does not abolish civil law liability. On the contrary, the existence of civil liability is a necessary precondition for the insurance to be effective. Insuring the object of mortgage is in the interest of both parties in a mortgage relationship as it simultaneously secures the tortfeasor against the burden of compensation and the injured party (the person who sustained damage) against the risk of insolvency. Thus, insurance and liability are correlated and mutually conditioned. The expansion of insurance is a consequence of the development of civil liability. Nowadays, a new form of insurance is "insurance against liability of the owner of real estate, either for the real estate itself, or for personal and cargo lifts, or for persons in his service (*concierge*) or third persons (thieves)" (Besson, 1992:2268).

Insurance of property (assets) certainly does not cover all kinds of damage that may jeopardise the insured asset. This only refers to the damage arising from certain dangers (risks) which are explicitly designated

[17] For example, Article 1285 of the Greek Civil Code entitles the mortgagee to insure the building encumbered with mortgage against fire or any other risk at the cost of the debtor; thus, the creditor can also request an deferrable payment of debt in case the debtor does not regularly pay insurance premiums.

[18] The Act on the Right of Pledge on Movable Property registered in the Pledge Registry (Art. 19) provides that a pledge agreement may envisage the obligation of the pledgor to insure the pledged asset, but it is not compulsory.

in the conditions for specific types of property insurance.[19] According to the Obligations Act (art. 898, para. 1), the insured event must refer to a future event, which is uncertain and fully independent from the contracting parties' will. The insured event covers the specific risk which is designated depending on the type of asset and the potential risk for the asset; therefore, it is specified in the policy or in the general conditions of insurance.

When an insured event occurs, the insurance amount should serve for the premature collection of claim, unless the mortgagee assesses that the recovery of the mortgaged real estate is possible.[20] These issues should be regulated in more detail by the Mortgage Act, which merely provide for the insurance obligation but leave many issues to be regulated on the basis of contractual freedom and insurance companies' rules.

The question arises whether insurance may cover the damage or loss that occurred on the grounds of fault (culpability), and what degree of fault. In property insurance agreements, insurance conditions usually do not include liability for the damage or loss caused by intentional (deliberate) act or gross negligence. However, the insurer shall be obliged to compensate any damage or loss caused by the persons whose activities are under the control of the insured person (e.g. juveniles, employees, domestic help, etc.), on any ground whatsoever, regardless of whether the damage or loss has been caused by willful misconduct or negligence (Art. 929, para. 3, Obligations Act). The Act also envisages two legal grounds for excluding the insurer's obligations and liability. Thus, the insurer's obligations are excluded in cases where the damage has been caused by war operations or rebellions, and in cases where it has been caused by the defects in the insured object (Articles 930 and 931, Obligations Act). These limitations are of dispositive nature, which means that they may be subject to negotiation and different agreement of the contracting parties.

CONCLUSION

For the owner of the mortgaged asset, the mortgage is an encumbrance on real property with postponed and potential effects. Formally, it does not deprive the owner of their property-related authorisations but, until the moment when the mortgage is extinguished, the owner is obliged to preserve the value of the mortgaged asset in order to

[19] The most common types of property insurance are: insurance against fire, lightning strike, explosion, thunderstorm, hail, floods and torrents, waters spillovers from sewage or water supply pipes; insurance against burglary and robbery; insurance of buildings under construction or prefabrication; insurance of crops and fruits, etc.

[20] We consider that the court should be allowed, at the request of the owner, to approve the recovery of the object if the mortgagee unjustifiably refuses to cede the insurance amount to the debtor.

ensure the exercise of the right to satisfaction. For this reason, the obligation to safeguard the mortgaged real estate in accordance with the legal standard of "a good host" for natural persons or "a good businessman" for legal persons is imposed on the mortgagor (debtor).

Concurrently, the mortgagee (creditor) is guaranteed certain rights which entail certain features of civil law liability of the debtor who has not observed the statutory or contractual obligations in terms of treatment of the mortgaged property. In order to prevent the depreciation of the mortgaged property value, the mortgagee is entitled to exercise two rights: the right to seek additional security, and the right to seek termination of detrimental actions. The legislator did not specify the order of filing requests (actions) for exercising these rights, leaving the choice of action to the mortgagee. Additional security of "similar degree of security" is, practically, the right to supplement the mortgage. If the value of the mortgaged asset is depreciated by the owner's or the direct holder's legal actions, and if the debtor does not provide additional security which is to preclude the depreciation of the mortgaged asset value, the creditor may request premature collection. We deem that the right to supplement the mortgage should also be envisaged in the event when the mortgaged object has a legal or material deficiency.

Analysing these rights and duties, we have come to the conclusion that they are a form of preventive civil law liability. As such, they preclude the damage that would be the subject matter of dispute only after the maturity of the claim.

The mortgagor's liability may also be alleviated by envisaging compulsory insurance of the mortgaged asset. This obligation is explicitly laid down by the law but, in our opinion, it should be left to the contracting parties' autonomy of will; thus, the creditor would be able to include this obligation in the contract whenever needed. As it is, the compulsory insurance increases the credit costs, which is quite unnecessary.

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ОДГОВОРНОСТ ХИПОТЕКАРНОГ ДУЖНИКА ЗА ОЧУВАЊЕ ВРЕДНОСТИ ЗАЛОЖЕНЕ НЕПОКРЕТНОСТИ

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Резиме

Хипотекарни дужник, као власник предмета хипотеке, задржава сва својинска овлашћења, али добија обавезе којима се успоставља његова одговорност за очување вредности заложене ствари и чије поштовање контролише хипотекарни поверилац. Стога, власник као хипотекарни дужник не сме физички мењати предмет хипотеке без сагласности хипотекарног повериоца у писаној форми, који може да одбије захтев само из оправданих разлога; дужан је да чува и одржава предмет хипотеке као „добар домаћин" (физичка лица), односно као „добар привредник" (правна лица); одговоран је за мане ствари; обавезан је да осигура хипотековану ствар од уобичајених ризика штете итд.

Поред тога, хипотекарни поверилац добио је одређена права која може да користи ако хипотекарни дужник не поштује своје обавезе. Најважнија су право приступа и права ради предупређења смањења вредности ствари. Право приступа овлашћује повериоца на улазак у непокретности и контролу одржавања ствари од стране држаоца. Хипотекарни поверилац има два права ради предупређења смањења вредности предмета хипотеке – право на додатно обезбеђење и право на тражење престанка штетних радњи.

Посебан значај има осигурање хипотековане ствари од ризика оштећења. Осигурањем се не укида грађанскоправна одговорност хипотекарног дужника за оштећење ствари, али је обострано корисно, јер се починилац штете обезбеђује од терета накнаде под одређеним условима, а оштећени од ризика инсолвентности дужника.

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THE POSITION OF THE CHILD IN LITIGATION PROCEEDINGS IN THE LEGAL MATTERS OF EXERCISE, DEPRIVATION AND RESTORATION OF PARENTAL RIGHTS

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Abstract

Numerous entities in various procedural roles participate in the litigation proceedings for the exercising, denying and restoring of parental rights. The usual classification of litigation participants into subjects in a narrow, and subjects in a broader sense, may apply to such litigations. In the narrow sense, the subjects of the litigations are the litigation court and the litigants. In a broader sense, these are all persons who in any way participate in the litigation: interveners, counsel, witnesses, expert witnesses, interpreters, translators. Some of them participate in the proceedings to protect their own, and others to protect the rights and interests of others, and some are there to provide the necessary assistance in collecting the litigation material, present evidence, etc. Pursuant to the family laws, the capacity of a party in these proceedings, through the standardization of the right to the standing to commence an action, is assigned to the child, parents, custody authority and the public prosecutor. However, these are only potential, but not necessary participants in these proceedings. The proceedings may also be initiated and conducted without all the participants of the family-legal relation participating in them. As a rule, there is no participation of the child as a party, although, essentially, the child's right to live with parents and to have (adequate) parental care is the central theme of the proceedings. In all of these litigations, in fact, legal protection is afforded to the rights of the child arising from the parent-child relationship, namely from the rights and duties of the parent towards the child. This paper critically analyzes the national regulations governing the position of the child in litigation proceedings in the legal matters of exercising, denying and the restoring of parental rights, with a view to determine whether, and to what extent, the solutions contained in those regulations comply with the postulates of a fair trial, enable the exercise of a child's right to participate in the proceedings that are to decide on the issues that affect him/her and provide effective protection of his/her procedural rights.

Key words: child, court, litigation, exercise, deprivation and restoration of parental rights.

ПОЛОЖАЈ ДЕТЕТА У СУДСКОМ ПАРНИЧНОМ ПОСТУПКУ У ПРАВНИМ СТВАРИМА ВРШЕЊА, ЛИШЕЊА И ВРАЋАЊА РОДИТЕЉСКОГ ПРАВА

Апстракт

У поступку у парницама за вршење, лишење и враћање родитељског права учествују бројни субјекти у различитим процесним улогама. Уобичајена класификација учесника парничног поступка на субјекте у ужем и ширем смислу може се применити и на ове парнице. У ужем смислу, субјекти тог поступка јесу парнични суд и парничне странке. У ширем смислу, то су сва она лица која на било који начин суделују у парничном поступку: умешачи, заступници, сведоци, вештаци, тумачи, преводиоци. Неки од њих учествују у поступку да би штитили сопствена права и интересе, неки да би штитили туђа права и интересе, а неки су ту да би пружили неопходну помоћ суду у прикупљању процесне грађе, извођењу доказа и сл. Породичним законом је својство странке у тим поступцима, кроз нормирање активне легитимације, додељено детету, родитељима, органу старатељства и јавном тужиоцу. Међутим, ово су само потенцијални, али не и нужни, учесници у тим поступцима. Поступак се може и покренути и водити, а да у њему не учествују сви учесници спорног породичноправног односа. По правилу, изостаје учешће детета као странке, иако је, суштински, централна тема поступка право детета на живот са родитељима и на (адекватно) родитељско старање. У свим овим парницама, заправо, правна заштита пружа се правима детета која произлазе из родитељско-дечјег односа, односно из права и дужности родитеља према детету. У овом раду критички се анализирају национални прописи који уређују положај детета у судском парничном поступку у правним стварима вршења, лишења и враћања родитељског права, с циљем да се утврди да ли и у којој мери решења садржана у тим прописима прате постулате правичног суђења, омогућавају остваривање права детета да суделује у поступцима у којима се одлучује о питањима која га се тичу и обезбеђују делотворну заштиту његових процесних права.

Кључне речи: дете, суд, парница, вршење, лишење и враћање родитељског права.

INTRODUCTION

The civil proceedings are based on the two-party structure and can only be maintained as long as the two-party structure exists. The two-party nature of the proceedings corresponds to the existence of the two special interests of the parties, which are opposed to each other in the dispute (Poznić, Rakić-Vodinelić, 2015, pp. 186-187). The parties to civil proceedings are, in material terms, the subjects of the substantive legal relationship in which the dispute arises (the titles of subjective law, the holders of rights and obligations). Procedurally, the parties are the plaintiff – the person who seeks legal protection of his/her right by filing the claim, and the defendant – the person against whom the claim is filed, i.e. against whom legal protection is sought. In principle, this rule also applies to the specific civil proceedings relating to family relations, such as those in proceedings for the exercise, deprivation and restoration of parental rights. The Family Law defines special rules that apply to all

proceedings related to family relations, as well as special, common procedural rules for deciding on the issues of exercising, depriving and restoring parental rights (and on the protection of the rights of the child) – to which the title of Section 4, Chapter I of Part 10 of the Family Law of the Family Law refers: *Procedure in the dispute for the protection of the rights of the child and dispute for the exercise and deprivation of parental rights.* In this paper, we will limit ourselves to the issues of the procedural position of a child in civil proceedings in legal matters related to family relationships, which relate to the status issues of exercising, depriving and restoring parental rights.

The legal standing and status of the parties in civil proceedings for the exercise, deprivation and restoration of parental rights are governed by two systemic laws – *the Law on Civil Procedure* (hereinafter referred to as the LCP), which contains the rules of general civil proceedings, and the Family Law, which contains specific rules applicable to family relations proceedings. The procedures in litigation for the exercise, deprivation and restoration of parental rights are subject to the same procedural rules. The circle of persons with legal standing to sue is somewhat different, but what they have in common is that in all three cases the child has the secured place as the plaintiff.[1]

With respect to the existence of the party, the rules of the general civil procedure apply. The parties are determined in the claim. Entities acquire the capacity of a party at the time of filing the claim as a litigation action that initiates civil proceedings, but the status of a party can also be acquired subsequently, by the succession in a procedural relationship (in case of subjective reversal of the claim, the intervener coming to the place of the party that it joined, etc.). The party should exist at the time of the filing the claim, as well as during the course of the proceedings.

The participation of parties in civil proceedings is a necessity and one of the basic principles of civil proceedings, because it is through their actions that factual material is obtained that will serve as the basis for making a correct and lawful decision. Such a decision, proper and lawful, requires that all parties in the dispute be heard - *audiatur et altera pars.* In addition to the participation of the parties, the need for full and proper clarification of the disputed case often imposes the need for the participation of third parties who can contribute to the establishment of material truth **(**such as witnesses, expert witnesses, etc.). While, in the

[1] A lawsuit for exercising parental rights may be filed by: a child, parents and guardian (Family Law, Article 264, paragraph 1), a lawsuit for deprivation of parental rights may be filed by: child, the other parent, public prosecutor and guardian (Family Law, Article 264, paragraph 2), while lawsuit for restoration of parental right, in addition to persons who can claim deprivation of parental right, may also be filed by the parent who was deprived of parental right (Family Law, Article 264, paragraph 3).

case of witnesses or expert witnesses the law leaves it to the court to determine whether in a particular case there is a need for their participation and to what extent, the need for the parties to participate in the proceedings, given their particular position, is a necessity.

In lawsuits for the exercise, deprivation and restoration of parental rights, the participation of all participants in that family relationship – the parent-child relationship, is invaluable in order to correctly and fully establish the facts and make a decision that will protect the interests of the child as much as possible. Nonetheless, the child's participation in court proceedings and, in general, their right to participate in the making of all the decisions significant for them has been challenged at both the theoretical and practical (implementation) level, more than any other convention law (Vučković Šahović, Petrušić, 2015, pp. 105, 106). Although the *Convention on the Rights of the Child* (hereinafter the: CRC) raised this right of the child to the level of a basic principle, the fact that it significantly influences the change of the deeply rooted image of the child in society and the relationship between adults and children, traditionally based on power relations, influenced that this social construct and its transposition into the legal framework has been approached very cautiously.

The conventionally promoted principle of participation long after its ratification (CRC was ratified in 1990) was not applied in practice, although there were no formal obstacles, given the applicable constitutional solutions regarding the hierarchy of regulations and the possibility of direct application of international legal acts. Only after its transposition into national regulations, in 2005, by adopting the Family Law, it formally changed the position of the child, transforming it from an *object* enjoying protection (of adults and institutions) into the *subject* of family (parent-child) relationships, thus allowing the child to not only to be an active participant in their own growing up, but also to take an active part in all the proceedings in which his/her rights are decided, including those before the court. In this way, a new social construct in the understanding of the concept of childhood also received its legal verification.

LITIGATION CAPACITY, REPRESENTATION AND SECURING THE CHILD'S PARTICIPATION IN LAWSUITS FOR EXERCISING, DEPRIVING AND RESTORING PARENTAL RIGHTS

The contemporary concept of justice that adapts in all its elements to the needs of children – *child-friendly justice* – is a new concept of justice that ensures that in every proceeding all the rights of the child are respected, including the right of the child to be informed, to have legal representative, to take an active part in the proceedings and to be protected (Petrušić, 2016, pp. 395). These standards are based on the postulates of a fair trial, and their implementation implies the full application of the rule of law principle.

In our family procedural legislation, the procedural-legal position of a child in court proceedings relating to his/her family rights is defined by prescribing special rules of court procedure, different from those applicable in other civil court proceedings, and by recognizing the child's specific procedural abilities.

In lawsuits for the exercise, deprivation and restoration of parental rights, the child has the right to sue, i.e. its capacity to sue (*ius standi in iudicio*) is recognized. The capacity to become a party in the litigation is a prerequisite for the existence of the capacity to independently undertake litigation actions, because only the persons who have the capacity to become parties in litigation also have the capacity to litigate (Dika, 2008, pp. 13-17). The capacity to be a party, as a rule, allows the parties to personally take legal actions before the court, with a procedural-legal effect (postulatory capacity) or to authorize a proxy for this. The postulation inability is a procedural impediment. Since only a party with the legal capacity can take actions in the proceedings independently, and a child until the age of 14 is has no capacity to conduct business (Family Law, Article 64), they must be represented in court proceedings. Older minors (children aged 14 or over) have partial legal capacity. According to the Family Law, they can undertake all legal transactions with the prior or subsequent consent of the parents (except for the disposal of property, for which they need the consent of the guardian). Children over the age of 15, if they are able to reason, make their own decisions about which parent they will live with (Family Law, Article 60, paragraph 4), or whether and how to maintain personal relationships with the parent with whom they do not live (Family Law, Article 61, paragraph 4). As a child has the capacity to litigate within the limits of his/her recognized legal capacity (LCP, Article 75), they may legally take all procedural actions within the limits of their procedural capacity "because the capacity to litigate is always complete" (Stanković, 2009, 115).

The same rule should apply to the issuance of powers of attorney – the extent of a child's legal capacity in a particular case should determine whether they can authorize another person to represent them. A child could authorize a person to represent him or her only in the case of undertaking legal activities that the child could legally undertake:

"What cannot be owned by law cannot be acquired through another" (Stanković, Vodinelić, 1996, pp. 201).

The Family Law recognizes the right and duty of parents to represent the child not only in all legal affairs and in all proceedings beyond the child's legal and procedural capacity (legal representation), but they also have the right and duty to represent the child in all legal affairs and in all proceedings within the limits the child's legal and procedural abilities (voluntary representation), which particularly challenges the child's postulatory capacity.

That solution, according to which "parents have the right and the duty to represent the child in all legal affairs and in all proceedings within

the limits of the child's legal capacity and procedural capacity, unless otherwise provided by law (voluntary representation)" (Family Law, Article 72, paragraphs 1 and 2) is the original solution in our family law and raises a number of questions in its application. Until now, it has been clear in legal theory that, unlike statutory representation, which implies that it is such an authorization for the representation against which the represented person has no influence, for voluntary representation it is decisive, since it has its basis in the will of the person represented and assumes their determination to be represented by an attorney (Rosenberg, 1954, § 47 I 1). However, because of the deviation from the usual understanding of the term voluntary representation, this domestic solution faces different interpretations by legal theorists. While some consider it to be a "legally voluntary" representation because the basis of the power of attorney is not the will of the child, but the law itself (Petrušić, 2018, 175), others believe that it is basically still a matter of legal representation regardless of the child's business and litigation capacity and that the child's "will" is practically reflected in their tacit consent to parental representation (Palačković, 2006, 363). There are also such legal authors who believe that voluntary representation can by no means be legal because it is the basis for the child's voluntary representation, his/her will (Draškić, 2005, pp. 287; Kovaček Stanić, 2005, pp. 288).

If one accepts the (logical) view that the basis for the child's voluntary representation in litigation is his/her will, then, taking into account the given legal definition of voluntary representation, a new question arises, namely the question of how that child's will is expressed. Is it in a situation where the child has a special business and process, i.e. litigation capacity, that his/her tacit consent to parental representation in court proceedings is sufficient, or his/her will to be represented by his/her parents must be formalized through a certified written or record statement or power of attorney? If the said standard were not to be understood as the right of the child to decide to be represented through the parent in a particular proceeding, then his/her legally recognized special legal capacity would be completely devalued. Why the recognition of a child's special legal capacity, if the parent can always decide that he/she will represent the child, and not the child him/herself? When the child in the specific case has the legal capacity, and when it has full litigation capacity, the duty of the parent to represent him/her exists only if the child asks for this from the parent and duly authorizes them. In this case, the parent cannot have his/her own right to represent the child that has litigation capacity – the right of representation can only arise from the will of the child expressed through the power of attorney that the child, as the principal, has given him/her. Conversely, the parent has a duty to accept representation if the child requires it (the child as the principal can also chose to be represented by a lawyer, because he/she is the holder of the authority and the holder of the specific right he/she protects). The legal definition itself raises the question of the possibility of termination of power of attorney, given the duty of the

parent to accept to represent the child. Given the standards of justice that respect the rights of the child, the child should have the right to revoke that power of attorney at any time.

The next question raised by thus defined voluntary representation is the question of the extent of the power of representation. Starting from the view that the child has litigation capacity within the limits of his/her (special) legal capacity, the question arises as to whether the authorizations of a parent as a willing representative of the child are adapted to the powers of the legal representative, since the parents are the representatives of the child by law or are adapted to the powers of a proxy. Does the child have the right to determine the extent of the power of representation? There is also the question of the child's right to decide whether he/she will be represented by both parents or by one parent as willing counsel. The problem can also arise if there are conflicts between the actions taken by the child and the actions taken by the parent. Is the parent responsible for the damage caused to the child by incorrect representation? Does the court have the duty to appoint the child's temporary representative if he/she finds that he/she is inadequately represented in the proceedings (Family Law, Article 266, paragraph 2) even when the child has special legal capacity and full litigation capacity? Can the court appoint a temporary representative at all to a child who has legal and litigation capacity without his/her consent, i.e. request (Family Law, Article 265, paragraph 3)? The questions are numerous and require immediate resolution, as improper representation is a material breach of the provisions of the civil procedure, which pays attention to by both the second instance and the revision court ex officio (LCP, Article 374, paragraph 2, clause 9).

But let us get back to the legal representation of a child. As already mentioned, in lawsuits for the exercise, deprivation and restoration of parental rights the child has the capacity to bring proceedings as the holder of rights from family relations, therefore they have the position of an authorized plaintiff. However, in terms of the capacity to stand trial (and the defendant has the capacity to stand trial if the corresponding duty is related to him/her), things are a little different. Namely, it may be concluded from the accepted concept of the subjective family rights of the child as human rights and the accepted definition of parental right as the parental duty, which they carry out "*only to the extent necessary to protect the person, rights and interests of the child*," that the child does not have the capacity to be sued, namely he/she does not have the position of a necessary and unique co-litigant with the parents in the proceedings in which it is decided on the exercising, deprivation or restoration of parental rights. The actual capacity to stand trial in these proceedings belongs to the parents, regardless of the capacity of the child, although, *due to the nature of the legal relationship*, according to the general rules of civil procedure law, the claim should include all persons who are parties to that material

legal relationship (Petrušić, 2006a, 183). In family-law disputes where the court is obliged to decide in its ruling, in addition to the main issue which is the subject of the lawsuit, also on exercising, and may also decide on the deprivation of parental rights (such as marital disputes, Family Law, Article 226) – the child does not have the position of a litigant. Generally, in domestic law, except in maternity and paternity disputes, the child is not provided with the position of a litigant in litigations in which the litigation for exercising and the litigation for the deprivation of parental rights are conducted at the same time. In such a situation, in a litigation based on the two-party structure, the procedural position of the child is "blurred" because the child is only a "hidden", "covert" party (Stanković, 2012, pp. 42), although the child is a necessary participant in the substantive legal relationship considered by the court and whatever decision it makes, it will affect the position and rights of the child in the parent-child relationship.

In a lawsuit for the exercise, deprivation or restoration of parental rights, in which the child has not acquired the status of a party, the child could, as an independent holder of rights from family relations, acquire the position of an *intervener* under the general rules of civil procedure law (LCP, Article 215), namely the intervener with the position of unique co-litigant (because the effect of the ruling also applies to the child). Although this legal possibility exists as a general procedural rule, it is practically inapplicable, since the Family Law did not pay special attention to this issue. Without proper procedural operationalization, the law itself, even though legally proclaimed, and albeit the supreme convention principle (participation), is not possible without a closer provision that would define who is obliged to inform the child of the possibility of participating as a court intervener in the proceedings in which issues important for him/her are being decided upon, and, additionally, who is responsible to prepare the child for such participation.

Similar issues are related to other aspects of the child's participation in court proceedings. If a child participates in the proceedings as a witness, he/she is subject to the same procedural rules that were prescribed for witnesses in general civil proceedings – there are no adjusted rules on how to prepare a child for testimony, on the manner of hearing, nor are there provisions on the witness failure to respond to subpoena, on the contempt of court, etc., and these are all appropriate to situations involving a child as a witness (Vujović, 2019, 199).

Although the applicable legal regulations generally proclaim the right of a child to be a party even when he/she is not a party, he/she has the *right* to express his/her opinion freely and directly in any proceedings in which his/her rights are decided (Family Law, Article 65), the procedural legislation does not provide the mechanisms for exercising that right of the child. The court, as well as the collision guardian, or the child's temporary representative, has a duty to allow the child to express his/her opinion

freely – but *only when the child is a party* (Family Law, Articles 265 and 266) (Ćorac, 2014, 331). In addition, the provisions on the exercise of the child's right to express an opinion require special analysis. It is undisputed in legal theory that the full participation of the child in the proceedings is not ensured by the mere "hearing" of the child who is able to express his/her opinion, but rather that it is a complex process that involves multiple stages. In this respect, the domestic legislator also stipulated that the court in a lawsuit first determines whether a child is capable of forming his/her opinion, taking into account the child's age, developmental abilities, etc. In this process, the court, as a rule, consults experts. If the court determines that the child is capable of forming his/her opinion, it must: 1) ensure that the child receives all the information he/she needs to express his/her opinion in due time; 2) allow the child to express his/her opinion directly; 3) make sure that the consequences of accepting this opinion are appropriately explained to the child: 4) determine the child's opinion in a manner and place appropriate to them, and his/her maturity; 5) give due consideration to the child's opinion. The assessment of whether the child's expressed opinion is his/her authentic opinion or the result of instructions and pressure from adults, or whether the child's expressed opinion or desire is in accordance with his/her best interests, shall be provided by experts. The Family Law prescribes the rule that a person selected by the child him/herself should be present at an interview with the child (Article 65, paragraph 6), but not how, on whose proposal and with whose help the child would choose this person to assist and support him/her in the proceedings in which he/she should form and express his/her opinion. Also undefined is the position of that person in relation to the collision guardian or temporary representative, who also have certain legal duties regarding the exercise of the childss right to express an opinion.

The obligation to obtain opinion from the child during court proceedings is not unconditional. The law imposes certain restrictions, and they are related to the assessment of the best interests of the child The court may deprive the child of the right to express an opinion in the proceedings whenever it considers that expressing an opinion would *obviously be contrary to the best interests of the child* (Family Law, Article 266 *in fine*), and no specific legal remedy is provided to ensure the control of the court decision brought without the child's involvement in the procedure (Delibašić, 2006, 28). The failure of the court to allow the child to express his/her opinion in the court proceedings concerning the child is not envisaged as a material breach of the provisions of the civil procedure which would lead to the annulment of the decision and which the second instance court would take into account ex officio (Petrušić, 2006b, 114), the so-called absolute material breach. Such a failure by the court could possibly be classified as the so-called relatively material breach, which exists when the court did not apply or incorrectly applied a procedural

law provision during the proceedings, which was or could have influenced the issuance of a lawful and correct ruling, whereby such violations are only considered by the second instance court if the appellant has pointed to them.

CONCLUSION

The challenges of the modern judiciary faced with requests that should contribute to the idea that a child is informed on each and every proceeding in which issues related to the child are being decided, to be given the opportunity to form and express his/her own opinion, to participate in the proceedings in a manner adapted to his/her age and developmental capacities and to obtain his/her independent legal representative and all necessary legal assistance, better known as child-friendly justice standards, are based on the principles of a fair trial. The essential, constitutive elements of the right to a fair trial, in addition to the right of access to a court and legal remedy, are also the principles of equality of arms and *fair balance*. Neither party should be in a much weaker position in the proceedings than the other (Rozakis, 2004, pp. 96, 97). The principle of *audiatur et altera pars* primarily has a methodological value – the organization and manner of action of the court in litigation must be arranged in such a manner so as to enable the "other party" to be heard, which implies all of the parties involved in the dispute. However, in a lawsuit that discusses the relationship between the child and the parent, although the child has legal standing, he/she does not have the secured position of a party. He/she is usually not in the role of the plaintiff, but it is neither the "other" nor "opposing", nor should it be a "hidden" party. The child is and should be the central figure of the proceedings, because the proceedings are designed to protect him/her, to protect his/her rights. Therefore, the legal solutions according to which the child does not have to have the status of a party to the proceedings at all, and according to which both the court and the temporary representative of the child may decide that the child who is a party to the proceedings still does not receive all the information they might require to form and express their opinion on the subject matter of the proceedings, namely that they may arbitrarily decide that the child is not given the opportunity to participate in the proceedings at all in any way – because of their belief that it would harm his/her best interests, require serious review.

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ПОЛОЖАЈ ДЕТЕТА У СУДСКОМ ПАРНИЧНОМ ПОСТУПКУ У ПРАВНИМ СТВАРИМА ВРШЕЊА, ЛИШЕЊА И ВРАЋАЊА РОДИТЕЉСКОГ ПРАВА

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Резиме

У парницама за вршење, лишење и враћање родитељског права суделовања свих учесника односа у вези са којим је дошло до спора – односа детета и родитеља – од непроцењиве је важности за правилно и потпуно утврђивање чињеничног стања и доношење законите одлуке која ће у највећој мери задовољити најбоље интересе детета. Иако је у правним стварима вршења, лишења и враћања родитељског права детету законом признато право на тужбу, оно је само потенцијални, али не и нужни, учесник у судском поступку. Стварна легитимација припада родитељима, независно од легитимације детета, због чега дете углавном није у улози странке, а не постоји посебно процесно правило о нужном и јединственом супарничарству свих учесника спорног породичног односа. Процесне одредбе (опште и посебне) које омогућавају детету да када није подносилац тужбе, а није ни тужени, учествује у поступку у некој другој процесној улози – као умешач, сведок или само као неко ко има право да изрази своје мишљење о предмету поступка који га се тиче – тешко су спроводиве у пракси. Разлог за то није само неприлагођеност општих процесних правила стварним (развојним) способностима детета већ и недостатност посебних правила о заступању широко постављених дискреционих овлашћења привременог заступника и суда у процени да ли би учешће детета у конкретној парници било очигледно у супротности са његовим најбољим интересима, те низа других ограничавајућих правила и правних празнина. Дете које није ни странка ни умешач нема могућност улагања жалбе на судске одлуке којима је незадовољно, па и када је у самом поступку било у прилици да изрази своје мишљење у вези са предметом одлучивања. Све наведено објективно компромитује могућност учешћа детета у парницама у којима се одлучује о важним статусним питањима, питањима правног положаја, односно уређења правних односа детета и родитеља.

ПАНОРАМА
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COPING STRATEGIES AND THE DIMENSIONS OF ATTACHMENT IN STUDENTS

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Abstract

The paper focuses on the relationship between the dimensions of affective attachment and a three-dimensional model of coping strategies (problem-focused coping, emotion-focused coping and avoidance: distraction and social diversion). To analyze this problem, the Coping in Stressful Situations questionnaire (CISS, Endler & Parker, 1990) along with the Questionnaire for Attachment Assessment (UPIPAV -R, Hanak, 2004; Hanak 2011) was used on a sample of 152 students of the Faculty of Philosophy.

The results indicate the existence of significant correlations between coping strategies and the dimensions of attachment. Specifically, there is a negative correlation between problem-focused coping and unresolved family trauma, fear of using an outside secure base and a negative working model of self, while there is a positive correlation with the ability to mentalize. There is a positive correlation between emotion-focused coping and distraction strategies, and fear of using an outside secure base, a negative working model of self and negative working model of others, and poor anger management where there is a positive correlation between emotion-focused coping and unresolved family trauma. Finally, there is a negative correlation between social diversion and unresolved trauma, and a negative working model of self and a positive one between fear of using an outside secure base. The results of the regression analysis indicate that the aforementioned dimensions of affective attachment, as predictors explain 21,1% of the variance of problem-focused coping, 13,3% of the variance of the distraction strategy, 24,6% of the variance of the strategy of social diversion, and as much as 49,9% of the variance of emotion-focused coping.

Even though drawing any conclusions requires a greater sample, we could say that the participants are more prone to maladaptive coping if they display more pronounced dimensions of affective attachment typical of insecure patterns of attachment (a negative working model of self and a negative working model of others, unresolved family trauma, fear of using an outside secure base and poor anger management).

Key words: coping strategies, dimensions of attachment, students.

СТРАТЕГИЈЕ ПРЕВЛАДАВАЊА СТРЕСА И ДИМЕНЗИЈЕ АФЕКТИВНЕ ВЕЗАНОСТИ КОД СТУДЕНАТА

Апстракт

У овом раду нагласак је на односу димензија афективне везаности и тродимензионалног модела превладавања стреса (превладавање усмерено на проблем, превладавање усмерено на емоције и избегавање: дистракција и социјална диверзија). Са циљем испитивања наведеног проблема, на узорку од 152 студента Филозофског факултета, у раду су примењени *Упитник суочавања са стресним ситуацијама* (ЦИСС, Ендлер и Паркер, 1990) и *Упитник за процену димензија афективне везаности* (УПИПАВ, Ханак, 2004). Резултати указују на постојање значајних корелација између начина суочавања са стресом и димензија афективне везаности. Конкретно, превладавање усмерено на проблем у негативној је корелацији са неразрешеном породичном трауматизацијом, страхом од коришћења спољашње базе сигурности и негативним моделом селфа, док је у позитивној корелацији са капацитетом за ментализацију. Превладавање усмерено на емоције и стратегија дистракције позитивно корелирају са страхом од коришћења спољашње базе сигурности, негативним моделом селфа и других, те слабом регулацијом беса, при чему је превладавање усмерено на емоције позитивно повезано и са неразрешеном породичном трауматизацијом. На крају, социјална диверзија значајно негативно корелира са неразрешеном траумом и негативним моделом селфа и позитивно са страхом и коришћењем спољашње базе сигурности. Резултати регресионе анализе показују да наведене димензије афективне везаности као предиктори објашњавају 21,1% варијансе стратегије суочавања усмерене на проблем, 13,3% варијансе стратегије дистракције, 24,6% варијансе стратегије социјалне диверзије и чак 49,9% варијансе стратегије превладавања усмерене на емоције. Иако је за закључивање неопходан већи узорак, може се рећи да су субјекти истраживања утолико склонији неповољнијим стратегијама превладавања стреса уколико су код њих израженије димензије афективне везаности типичне за несигурне обрасце везаности (негативан модел селфа и других, неразрешена породична трауматизација, страх од коришћења спољашње базе сигурности и слаба регулација беса).

Кључне речи: стратегије превладавања стреса, димензије афективне везаности, студенти.

THE INTRODUCTION OR WHY STUDIES CORRELATION PATTERNS OF ATTACHMENT AND COPING STRATEGIES ARE IMPORTANT

First of all, in theory, and for decades now and in research as well, the quality of the affective attachment established in early childhood is connected with numerous and significant choices and events later on in life (Cassidy and Shaver, 2008). On the other hand, stress is a part of people's lives all over the world, and we dare say in Serbia even more so than in other environments. Considering that stress is an inevitability of human existence, the question of coping strategies seems especially important. Some means of coping with stress are significantly more effective than others (Cassidy, 1994). The question is, what do certain individuals base their choices on, that is, why does every individual not choose the most

effective means of coping with stress. In this paper we attempted to determine whether the means of reacting to stress are connected to patterns of affective attachment. If they are, do the so-called insecure patterns more frequently lead to maladaptive reactions to stress? If this is correct, we are left with the option of educating mothers or guardians to, during early interaction, establish a pattern of attachment which optimizes the chance of the child's stress processing to be the most adequate possible.

AFFECTIVE ATTACHMENT: INDIVIDUAL DIFFERENCES

Affective attachment refers to the specific relationship which is formed between a mother and child in early childhood and lasts during one's entire life, as a permanent psychological connection established between two people (Bowlby, according to Holmes, 1993). After Bowlby determined the theoretical framework, the Canadian scientist Mary Ainsworth (1913-1999) operationalized the theory and enabled the evaluation of individual differences within attachment theory. Namely, Mary Ainsworth designed an experimental laboratory procedure (Ainsworth & Witting, 1969) whose aim is to evaluate the relations between attachment and behavior under stress, that is, separation anxiety in the "strange situation" conditions. According to the theory of affective attachment, only one type of behavior in this situation is innate, and that is seeking out one's mother when she leaves and calming down when she returns (*the primary strategy*). Of course, children also react using the so-called *secondary strategies*, which refer to the adaptation to specific experiences acquired through daily contact with the mother. Individual differences are systematized in the following classification (Ainsworth, Blehar, Waters & Wall, 1978):

Secure affective attachment – Children with this type of attachment will be upset by the mother's leaving in the experimental situation, which is why they will look for her, or cry and call for her, but once she has returned, they will *immerse themselves* into the safety of her embrace, calm down and continue playing (*the primary strategy*). In a word, these mothers are a secure base from which the child is to venture out and explore, as well as a source of comfort following separation. Adults with a secure affective attachment are characterized by trust of themselves and trust of others. What this means is that an individual with secure affective attachment possesses the capacities to cope with stress. According to Komorowska-Pudło (2016), an individual with secure affective attachment possesses: sense of security (Kuczyńska, 2001), and trust (Rostovski, 2003), ranging to emotional maturity (Belski, Cassidi, 1994), a sense of openness towards others and the belief that others can be relied on (Liberman, Doile, Markievicz, 1995), and self-respect (Bee, 2004; Bowlby, 1988), consistent structure (Mikulincer, 1995), competence, creativity (Plopa, 2008,) social skills (Liberman, Doile, Markievicz, 1995; Bee, 2004) and an adequate perception of stressors and selectivity in behavior in relation to stressors (Plopa, 2003).

Insecure/ambivalent affective attachment – In the experimental situation, these babies cry when the mother leaves, but are not soothed by her return. They are ambivalent, seek contact, but when they achieve it, they cannot remain calm, cannot relax (*the secondary strategy*). Where does this strategy originate from? If we knew that the mothers from this category react selectively to the signals and needs of their children, it becomes clearer that there is uncertainty regarding the mother's presence which leads to the need of the children to control them and thus ensure their presence. Adults with these patterns of behavior are characterized by a negative working model of self and a positive working model of others (Stefanovic Stanojevic, 2010).

Also, according to Komorowska-Pudło (2016), these individuals are characterized by: a pronounced sense of insecurity, increased caution (Plopa, 2008), low self-esteem (Cassidi, 1988; Sroufe, 1985), anxiety (Marchvicki, 2012), a sense of inadequacy (Brennan, Morns, 1997; Plopa, 2008), helplessness (Czub, 2003), emotional immaturity (Greenberg, 1999), impulsivity (Bowlby, 1988; Czub, 2003) which results in an increase in sensitivity to stress (Plopa, 2008; Marchvicki, 2012). What is more, it has been determined that individuals who have formed preoccupied affective attachments are more often prone to depression and are more likely to resort to alcohol (Brennan, Shaver, Tobei, 1991).

Insecure/avoidant affective attachment – In the "strange situation" these children, once their mother leaves, do not cry, do not look for their mother, do not display any open signs of distress. They react neither to her departure nor to her return, accustomed to their expectations not being satisfied, and meeting their mother's expectations by not reacting (*the secondary strategy*). Where does this type of behavior originate from? In the category of insecure/avoidant children, the mothers are rather consistent in not reacting to signals and needs, which does not mean that they are not involved in their children's lives, but that they do so as part of a regimen which they consider to be more appropriate. Which is why the children are forced to endure the so-called PDD: **P**rotest, **D**esperation and finally **D**etachment, thinking that they do not need anyone (Bowlby, Robertson, 1952). Adults with this pattern of attachment are characterized by a negative working model of others and a defensive positive working model of self. When faced with stress, these individuals exhibit signs of unease and tension (Troi, Sroufe, 1987), withdrawal from contact with others (Cassidi, 1988; Plopa, 2008), a low level of emotional maturity, impulsivity and agitation (Bartholomev, Horovitz, 1991; Brennan, Bosson, 1998; Rostovski, 2003), aggression (Stavicka, 2001), hostility (Stavicka, 2001; Clarke-Stevart et al., 1988, according to Rostovski, 2003), vengefulness (Erickson, Sroufe, Egeland, 1985, according to Stavicka, 2008). Individuals with avoidance affective attachment risk more than people with other styles of attachment (Sroufe et al., 2000, following Czub, 2003; Gentzler, Kerns, 2004), and

resort to alcohol, drugs and other stimulants (Bartholomev, Horovitz, 1991; Brennan, Bosson, 1998, according to Rostovski, 2003).

Insecure/disorganized affective attachment – Main & Solomon (1986) defined the fourth category of affective attachment by naming it disorganized or disoriented attachment. Namely, after years of observing children in the "strange situation", it became obvious that in addition to the described coping strategies, there are forms of behavior which are difficult to classify as belonging to any of the known strategies. It turned out that there are children who do not have an organized strategy to prevent their parents from leaving the room, and even fewer strategies with which to greet them. In short, these children do not exhibit a coherent manner of coping with stress caused by separation (Stefanovic Stanojevic, Tosic Radev, Stojilkovic, 2017). Adults with these patterns of attachment are characterized by a negative working model of self and a negative working model of others when faced with stress. Disorganized-disoriented insecure attachment, a pattern common in infants abused during the first 2 years of their life, is psychologically manifest as an inability to generate a coherent strategy for coping with relational stress.

In an attempt to integrate the socially personal and clinical approach to the phenomenon of attachment, the concept of understanding the quality of attachment through the dimensions of affective attachment was defined. The concept was operationalized using the UPIPAV instrument (Hanak, 2004), and later in a revised version UPIPAV-R (Hanak, 2011). The dimensions of the revised instrument include: Unresolved trauma, Poor anger management, the Ability to mentalize, the Ability to use an outside secure base, Fear of losing the outside secure base, a Negative working model of self, and a Negative working model of others. A greater number of dimensions enable a more precise understanding of the functioning and psychological structure of an individual's personality. This is why we opted for the dimensional approach in this study.

STRESS AND COPING STRATEGIES

When outlining the phenomenon of stress, we must mention Hans Selye (1907-1982). Selye was the first to use the concept of stress with the purpose of understanding the physiological responses to threats to the human body. The term stress itself was explained by bodily reactions which significantly threaten the balance in the human body. Reactions with the aim of adapting, that is, maintaining internal balance, he referred to as the general adaptation syndrome. This syndrome has three successive stages (Selye, 1956): the alarm stage (it begins with the appearance of the stressor which threatens to disrupt the homeostasis); the resistance stage (during this stage the body tries to adapt to the new conditions using defense mechanisms); and the exhaustion stage (this is the breaking point of the defenses which might lead to illness).

And while stress is a relatively old and frequent topic of study, only three decades later, in the period between 1956-1984, did researchers begin to study the individual differences in coping with stress. Lazarus & Folkman (1984) were one of the first to elaborate, in detail, on these coping strategies. They believed that when we find ourselves in a stressful situation, the way in which we observe and interpret the threatening content determines our response to stress. In order to understand the nature of psychological stress, it is also important to understand the cognitive processes which determine the type and intensity of a stressful reaction. The first variable to determine is that of a *threat* - the experience of a stimulus from our surroundings that we perceive as potentially dangerous. That is followed by the *primary appraisal* of the threat which is influenced by one's self-confidence and their level of anxiety. During the second process, or the *secondary appraisal* of the stressor, the person assesses the various options of behavioral responses to the stressor. That is referred to as coping. The basic functions of the secondary appraisal can move in a twofold direction – towards an active or passive response, that is, towards using problem-focused coping or emotion-focused coping (Lazarus & Folkman, 1984; Folkman & Moskowitz, 2004). Relying on Lazarus' model, Endler and Parker (1990) developed a model based on which the individual possesses an inventory of various coping styles, which they use in various situations:

1. *Task-oriented coping* refers to either solving the problem or taking action. Orientation on the task itself and solving the problem changes the individual-environment relationship, either through direct action or a cognitive reconstruction. Individuals who are oriented towards the *future* plan, consider the best means of overcoming the problem and coping with stress. This is fully compatible with their efforts to find moral support, empathy, sympathy and understanding for the situation they find themselves in from their social environment (Kostić & Nedeljković, 2013).

2. *Emotion-oriented coping* is a style of coping where stress functions as a means of reducing or coping more easily with the emotional tension caused by the stressor. In addition, it includes various strategies which refer to openly expressing emotions, and looking for social support as a result of emotional and instrumental reasons. These strategies do not directly alter the stressful situation.

3. *Avoidance-oriented coping* refers to the cognitive, emotional or behavioral attempts to distance oneself from any kind of stress caused either by psychological or physical reactions to the stressor. Not taking or avoiding action that is oriented towards the problem, negation of the fact that the event happened, isolation, repression of emotion, consumption of alcohol and drugs, fantasizing, daydreaming, going out at night and self-destructive behavior are just a few of the avoidance strategies. This coping strategy includes *distraction* and *social diversion.* Distraction refers to focusing on a task which is not associated with the stressful situation. This style is

maladaptive. Social diversion is reflected in increased socialization with people. When faced with a threat, the person turns to others in order to avoid dealing with the problem.

What does our choice depend on? Does the quality of our early interaction with our mother, or guardian, determine the way we cope with stress?

It happens that children experience numerous and different kinds of stress. What could they do about it? In situations when exposed to a stressor they will rely on their evaluation of the signals they read from the faces of their guardians. For the human infant, *his mother is the world*, from her face the infant perceives the world as being either dangerous and fearful or friendly and supportive. In addition, the baby sees a reflection of itself in the mother and slowly compiles an image of itself, as a beloved and precious being or a being which is neither loved nor precious. Thus, the baby's reaction will be a consequence of the signals sent by the figure with which it has developed an affective attachment. The evaluation of the danger will depend on the mother's facial expression. A supportive and adequate mother has the ability to make the world a comfortable place for her baby even when the circumstances are not ideal, just like a mother overwhelmed by her own fears can even in relatively decent living conditions send its child an image of the world as an uncertain, unfriendly, and even frightening place. Individual differences in the way people cope with stress could be tied to these early images of oneself and the world at large. Children who believe in themselves and others will learn that stress can be coped with. Children trapped in their negative experiences of themselves and/or the world at large will be more prone to less adaptive strategies of coping.

What do the research results indicate? These assumptions about the relationship between personality characteristics defining each of the four attachment styles with preference for specific strategies for coping with stress have been confirmed in many studies. We will include only some of the existing studies: Turkish students with a secure attachment style, more often than students with an insecure style, undertook active planning of problems solving and sought external support in difficult situations. However, they would rarely undertake avoidant behavior both in the behavioral and mental area (Terzi, 2013). In other studies involving students, it was found that people with an anxious-ambivalent attachment style strongly reacted to difficult situations - they were more vulnerable to the perception and interpretation of events as stressful (Pielage, Gerlsma, Schaap, 2000). In adult respondents from New Zealand, avoidant attachment style in stressful situations correlated positively with denial and mental withdrawal, and negatively with the search for emotional and instrumental support. An anxious-ambivalent attachment style was positively correlated with denial and both behavioral and mental withdrawal shown in stress response, and with resorting to alcohol and drugs in those situations, and negatively

correlated with an active and planned attitude to problem solving, and choosing such a coping strategy in the search for instrumental support (Baker, 2006). Another research conducted on a group of Polish nurses showed that secure attachment styles are an important predictor of dealing with difficult circumstances. In this study insecure attachment styles were associated with undertaking destructive or ineffective behaviors in difficult situations. The avoidant attachment style correlated negatively with the search for social support, with planning to solve the problem, with a positive estimation of the problem, as well as with avoidance of difficult situations. However, the anxious-ambivalent attachment style correlated positively with taking on responsibility for solving a problem themselves on the part of the nurses (Franczak, 2012).

In another study conducted among security guards working in the Belgian Red Cross, a negative relation between post-traumatic stress and the secure attachment style of the respondents, and a positive relation with both the avoidant and anxiety-ambivalent style were determined (Declercq, Willemsen, 2006). The research on the war experiences of respondents and the risk of disorders known as post-traumatic stress disorder (PTSD) shows that people with a secure attachment style work constructively in difficult situations and turn to others for emotional and instrumental support (Mikulincer, Florian, Weller, 1993; Mikulincer, Florian, 1995; Mikulincer, Shaver, 2003). People with insecure attachment styles often have negative thoughts and memories of stressful situations, and studies have revealed a positive correlation between these two styles and PTSD (Mikulincer, Florian, Weller, 1993; Mikulincer, Florian, 1995). Other studies show that anxiety-ambivalent people are also hypersensitive towards the problems encountered (Bartholomew, Horowitz, 1991), that they have trouble opening up to look for support from others, and that their ways of coping with stress are based on emotions and distancing themselves from others (Mikulincer, Florian, Weller, 1993; Mikulincer, Florian, 1995). People with avoidant attachment style manifest higher levels of somatization in difficult situations, hostility and avoidance. They distance themselves from others and are less likely to seek support (Mikulincer, Florian, 1995).

THE RESEARCH PROBLEM

The subject of the research was the issue of the possible correlations between various responses to stress (problem-focused coping, emotion-focused coping, avoidance-focused coping, distraction or social diversion) and the dimensions of affective attachment.

The research hypotheses are:

(H0) A correlation is expected between coping strategies and the dimensions of affective attachment.

(H1) It is expected that there will be a positive correlation between Problem-focused coping and the ability to mentalize and the ability to use an outside secure base, and a negative correlation with the dimensions which refer to the negative aspects of attachment (fear of using an outside secure base, poor anger management, unresolved trauma and a negative working model of and negative working model of others).

An explanation of the hypothesis: It is assumed that individuals capable of coping with stress by solving problems have a positive working model of self (Holmberg, et al, 2011). Thus, they are self-confident and ready to rely on themselves when solving problems. A positive working model of self means that these individuals have learned to use their ability to mentalize (the understanding of their own and other people's emotions). In addition, it might be assumed that those solving the problems can also rely on others when they deem it necessary to do so, which means they also have a positive working model of others. Thus, they are also ready to rely on their outside secure base. All the other dimensions of AA[1] indicate an insecure affective attachment, so a negative correlation is expected between those who are able to focus on the problem and these dimensions.

(H2) A positive correlation is expected between Emotion-focused coping and the dimensions which indicate the negative aspects of attachment, and a negative correlation with mentalization.

An explanation of the hypothesis: Emotion-focused coping belongs to the group of ineffective coping strategies (Alexander et al., 2001). Instead of solving the problem, that person remains stuck in a flood of their own emotions. Therein lies the expectation that there will be a positive correlation between individuals of this type and the so-called negative dimensions of AA, and a primarily negative one with the Ability to mentalize, that is, the ability to think about and understand the situation. No negative correlation is expected with the Ability to use an outside secure base, since individuals of this type mostly have a negative working model of self but a positive working model of others, and so will be prone to sharing the emotions which overwhelm them with others.

(H3) It is expected that there will be a positive correlation between Avoidance-focused coping and the dimensions which refer to the negative aspects of attachment, and a negative correlation with Mentalization and the Ability to use an outside secure base.

Explanation of the hypothesis: Avoidance-focused coping has two aspects. Distraction and social diversion. Individuals prone to distraction will run from the problem by focusing on another task, while individuals prone to diversion will escape into socializing, enjoyment, etc. None of the

[1] AA- Affective Attachment

described strategies solves the problem, that is, the aforementioned strategies belong to non-adaptive coping strategies.

(H4) It is expected that we can predict coping strategies based on the dimensions of affective attachment, in accordance with the previously established expectations of correlations.

RESEARCH VARIABLES AND MEASURING INSTRUMENTS

The dimensions of affective attachment are: Fear of losing an outside secure base, the Ability to mentalize, Unresolved family trauma, a Negative working model of self, a Negative working model of others, Using an outside secure base and Anger management. These variables are operationalized by the scores achieved on the sub-scales of the Questionnaire for Attachment Assessment (UPIPAV-R, Hanak, 2011). *The Questionnaire for Attachment Assessment* (UPIPAV-R) evaluates the basic aspects of attachment, conditioned by the analysis of the theory and existing instruments for the evaluation of attachment at the level of mental representations. This is a revised version of the Questionnaire for Attachment Assessment (*UPIPAV - R*, Hanak, 2011). It consists of a total of 77 items which measure affective attachment by means of seven dimensions (11 items each): fear of losing an outside secure base, the ability to mentalize, unresolved family trauma, a negative working model of self, a negative working model of others, using on an outside secure base and anger management. A number of studies have shown that the dimensional approach is more adequate, so we decided for the Serbian instrument for measuring these dimensions.

The participants evaluated the extent of their agreement with the provided claims on a seven-point Likert scale, where 1 corresponded to – I do not use it at all, and 7 to – I use them completely. The questionnaire consisted of claims which describe various feelings and attitudes towards oneself and others.

Coping strategies are general dispositions for a certain type of behavior under stressful circumstances (Zotović, 2004). In this paper, they are viewed through the following: problem-focused coping strategies, emotion-focused coping strategies, and avoidance strategies (Endler & Parker, 1990). The coping strategies are measured using the following measuring instrument: the CISS - Coping Inventory for Stressful Situations (Endler & Parker, 1990). The authors attempt to develop a way of measuring coping styles as stable personality traits. The questionnaire has 48 items divided into three sub-scales (16 items each): problem-focused strategies, emotion-focused strategies and avoidance-focused strategies (there are also two subscales for the Avoidance-Oriented scale: Distraction, and Social Diversion). The participants evaluated the extent to which they used certain types of activities in coping with stressful situations on a five-point Likert scale, where 1 corresponded to – I do not use it at all, and 5 – I use them completely (Endler & Parker, 1990).

SAMPLE

We used a non-probability sampling procedure, i.e. voluntary response sampling on a population of students. The sample consisted of 152 students, but the male and female sub-samples were not of equal size (18 males and 134 females). They are all students at the Faculty of Philosophy in Niš, Psychology Department (118) and the Pedagogy Department (34). The average age of the participants was 20.6.

RESEARCH RESULTS

Descriptive statistics

Table 1. The average values deviations and α –Cronbach of coping strategies

	N	Min	Max	M	SD	α
Problem-focused coping	152	44	79	63.26	7.592	0.80
Emotion-focused coping	152	30	77	51.43	9.461	0.83
Distraction	152	10	46	26.36	7.974	0.79
Social diversion	152	6	30	22.12	4.834	0.75
Avoidance-focused coping	152	20	73	48.47	11.257	0.77

The theoretical range of the scores on the Coping Inventory for Stressful Situations is from 16 to 80. On the questionnaire focusing on coping strategies, the participants achieved the highest scores on the Problem-focused coping sub-scale (M = 63.26). On this questionnaire, the participants achieved the lowest average values for the Avoidance-focused coping sub-scale (M = 48.47). The greatest deviations from the average values was recorded for the Avoidance-focused coping sub-scale (SD = 11.257).

Table 2. Average values, standard deviations and α – Cronbach for the dimensions of affective attachment

	N	Min	Max	M	SD	α
Unresolved trauma	152	11	74	29.75	14.783	0.89
Fear of losing an outside secure base	152	13	74	45.78	12.160	0.85
Negative model of others	152	14	75	43.65	12.060	0.84
Mentalization	152	32	77	57.76	9.320	0.72
Negative model of self	152	11	74	29.59	13.302	0.83
Using an outside secure base	152	23	77	61.82	10.945	0.86
Poor anger management	152	12	63	31.72	11.123	0.78

The theoretical range of the scores on the subscales of the Questionnaire for Attachment Assessment is from 11 to 77. On the Questionnaire for Attachment Assessment, the greatest average values were obtained for the sub-scales of Using an outside secure base (M = 61.98) and

Mentalization (M = 57.76). The lowest average values on this questionnaire were achieved for the sub-scales of the Negative working model of self (M = 29.59) and Unresolved trauma (M = 29.75). The greatest deviation from the average values was determined for the Unresolved trauma sub-scale (SD = 14.783).

Thus, on the studied sample, the most prominent type of coping is problem-focused, while the dominant dimensions of affective attachment are Using an outside secure base and the Ability to mentalize.

THE CORRELATION BETWEEN THE RESEARCH VARIABLES

Table 3. The correlations between the dimensions of AA and the coping strategies

		Problem-focused	Emotion-focused	Avoidance-focused	Distraction	Diversion
Unresolved trauma	r	-0.16*	0.316**	-0.047	0.078	-0.237**
Fear of losing OSB	r	-0.259**	0.523**	0.298**	0.26**	0.266**
Negative model of others	r	-0.11	0.353**	0.072	0.161*	-0.099
Mentalization	r	0.195*	0.133	-0.109	-0.134	-0.033
Negative model of self	r	-0.345**	0.552**	0.034	0.189*	-0.233**
Using OSB	r	0.067	0.098	0.209*	0.036	0.427**
Poor anger management	r	-0.059	0.353**	0.125	0.242**	-0.109

Note: OSB = outside secure base; * = $p < 0.05$; ** = $p < 0.01$

The correlations indicated in Table 3 point to a statistically significant correlation between the dimensions of affective attachment and the coping strategies for the entire sample. There is a statistically significant negative correlation between problem-focused coping and three of the so-called negative dimensions of AA (Unresolved trauma, Fear of losing OSB, Negative working model of self), and a positive one with Mentalization. There is a statistically significant positive correlation between emotion-focused coping and the so-called negative dimensions of AA (Unresolved trauma, Fear of losing OSB, Negative working model of others, Negative working model of self and Poor anger management). There is a statistically significant positive correlation between distraction and four negative dimensions of AA (Fear of losing OSB, Negative working model of others, Negative working model of self and Poor anger management), while there is a positive correlation between Social diversion and two negative dimensions (Unresolved trauma, and Negative working model of self), but also a positive correlation with the Ability to use an outside secure base. There is a statistically significant positive correlation between Social diversion, on the one hand, and Fear of losing OSB an outside secure base and the Ability to use an outside secure base, on the other.

Table 4. The parameters for the evaluation of a regression analysis model with predictors of the UPIPAV-R dimensions for the criterion variable of problem-focused coping

R	R^2	F	p
0.459	0.221	5.498	< 0.05

The predictive model of the dimensions of affective attachment for problem-focused coping is statistically significant. The predictor variables explain 22.1% of the variance in this coping strategy.

Table 5. The individual predictive power of the dimensions of AA for problem-focused coping

UPIPAV-**R** Dimensions	β	t	p
Unresolved trauma	-.005	-.050	> 0.05
Fear of losing an outside secure base	-.229	-2.318	< 0.05
Negative model of others	.073	.798	> 0.05
Mentalization	.233	2.785	< 0.01
Negative model of self	-.346	-3.323	< 0.01
Using an outside secure base	.007	.064	> 0.05
Poor anger management	.111	1.303	> 0.05

The following dimensions have emerged as individually significant predictors of the problem-focused coping strategy: *fear of losing an outside secure base*, *mentalization* and *negative working model of self*. Focus on solving problems is found among students with low values for fear of losing their OSB and a negative working model of self, and high values for mentalization.

Table 6. The parameters for the evaluation of the regression analysis model with predictors of the UPIPAV-R dimensions for emotion-focused coping

R	R^2	F	p
0.706	0.499	20.499	< 0.01

The dimensions of affective attachment explain almost 50% of the variance in individual differences for emotion-focused coping. The obtained prediction model is statistically significant.

Table 7. The individual predictive power of the dimensions of AA for emotion-focused coping

UPIPAV-R Dimensions	β	t	p
Unresolved trauma	-.013	-.165	> 0.05
Fear of losing an outside secure base	.322	4.091	< 0.01
Negative model of others	.037	.504	> 0.05
Mentalization	.106	1.590	> 0.01
Negative model of self	.427	4.990	< 0.01
Using an outside secure base	.100	1.118	> 0.05
Poor anger management	.177	2.595	< 0.05

The following dimensions emerged as independently significant predictors of emotion-focused coping strategies: *fear of losing an outside secure base*, *negative working model of self* and *poor anger management*. Focus on emotions is greater among students for whom the values for these three dimensions of affective attachment are high.

Table 8. The parameters for the evaluation of the regression analysis model with the predictors of the UPIPAV-R dimensions for the criterion variable avoidance-focused coping

R	R^2	F	p
0.373	0.139	3.328	< 0.05

The regression model for coping based on avoidance is statistically significant and it can explain 13.9% of the variance in the criterion variable.

Table 9. The individual predictive power of the dimensions of AA for avoidance-focused coping

UPIPAV-R Dimensions	β	t	p
Unresolved trauma	-.007	-.088	> 0.05
Fear of losing an outside secure base	.213	2.233	< 0.05
Negative model of others	.038	.429	> 0.05
Mentalization	-.219	-2.079	< 0.05
Negative model of self	-.017	-.178	> 0.05
Using an outside secure base	.184	1.534	> 0.05
Poor anger management	.087	.965	> 0.05

This stress coping strategy will be more developed among students who have higher scores for the dimension *fear of losing an outside secure base* and lower scores for *mentalization*.

Table 10. The parameters for the evaluation of the regression analysis model with the predictors of the UPIPAV-R dimensions for the criterion variable of social diversion-focused coping

R	R^2	F	p
0.496	0.246	6.726	< 0.05

The variance in social diversion (24.6%) could be explained in a statistically significant manner based on the interaction between the dimensions of affective attachment.

Table 11. The individual predictive power of the dimensions of AA for social diversion-focused coping

UPIPAV-R Dimensions	β	t	p
Unresolved trauma	.008	.082	> 0.05
Fear of losing an outside secure base	.169	1.752	> 0.05
Negative model of others	.063	.708	> 0.05
Mentalization	-.193	-2.356	< 0.05
Negative model of self	-.169	-1.607	> 0.05
Using an outside secure base	.365	3.345	< 0.01
Poor anger management	-.072	-.861	> 0.05

Two components of affective attachment have proved themselves to be independently significant predictors in explaining the variability in social diversion – *mentalization* and *using an outside secure base*. Coping strategies focused on social diversion will be more prevalent among participants with low mentalization and a high dimension of *using an outside secure base*.

Table 12. The parameters for the evaluation of the regression analysis model with the predictors of the UPIPAV-R dimensions for the criterion variable of distraction-focused coping

R	R^2	F	p
0.365	0.133	3.164	< 0.05

A statistically significant regression model with the components of affective attachment as predictors was obtained. The model can explain 13.3% of the variance in the distraction-focused coping strategy.

Table 13. The individual predictive power of the dimensions of AA for distraction-focused coping

UPIPAV-R Dimensions	β	t	p
Unresolved trauma	-.018	-.171	> 0.05
Fear of losing an outside secure base	.222	2.152	< 0.05
Negative model of others	.020	.204	> 0.05
Mentalization	-.140	-1.594	> 0.01
Negative model of self	.074	.658	> 0.01
Using an outside secure base	.031	.268	> 0.05
Poor anger management	.165	1.845	> 0.05

The distraction-focused strategy is more pronounced among the participants with higher values of *fear of losing an outside secure base*. The remaining predictors of affective attachment are not independently significant predictors of this coping strategy.

DISCUSSION AND CONCLUSION

(H0) The basic research hypothesis was partly confirmed. Most of the experienced correlations are statistically significant. The discussion will be organized around specific hypotheses, and in the conclusion we will refer to the general hypothesis.

(H1) A positive correlation was expected between problem-focused coping and the Ability to mentalize and the Ability to use an outside secure base, and a negative correlation with the dimensions which indicate the negative aspects of attachment (Fear of using an outside secure base, Poor anger management, Unresolved trauma and a Negative working model of self and Negative working model of others).

The research results have only partly confirmed the proposed hypotheses. There is a significant positive correlation between problem-focused coping and the Ability to mentalize, and a statistically significant negative correlation between it and three so-called negative dimensions of AA (Unresolved trauma, Fear of losing an outside secure base, Negative working model of self). No confirmation has been obtained on the existence of a statistically significant negative correlation with the dimensions of Negative working model of others and Poor anger management, but the direction of the obtained results indicates the possibility that on a larger sample we would have confirmed these hypotheses as well. Furthermore, this is the angle from which we can claim that individuals with a secure affective attachment will be most prone to the problem-focused coping strategy (a positive working model of self and model of others). Despite the noted significant negative correlation between it and the dimension of Negative working model of self, the dimension of Negative working model of others indicates the possibility that individuals with so-called avoidance-focused

coping strategies are also prone to problem-focused strategies (a negative working model of others and a positive working model of oneself). Naturally, prior to the research on a bigger sample, this hypothesis only has the strength of a speculation. In addition, no statistically significant positive correlation between it and the dimension the Ability to use an outside secure base was obtained, but the positive direction of the correlation indicates the possibility of statistical significance on a larger sample. Thus, the results of the research have confirmed the expectation that individuals with a positive working model of self, that is, secure and avoidant affectively attached individuals will be more prone to coping strategies that are the most effective. The obtained results support the results of existing research (Terzi, 2013; Franczak, 2012).

(H2) A positive correlation was expected between emotion-focused coping and the dimensions which refer to the negative aspects of attachment, but also the Ability to use an outside secure base and a negative correlation with the Ability to mentalize. The research results confirm the existence of a statistically significant positive correlation between all the negative dimensions of AA, which leads us to the conclusion that individuals with a negative working model of self and a negative working model of others are more prone to this type of coping strategy (the disorganized pattern). However, no statistically significant correlation with the Ability to mentalize has been obtained. The correlation is positive, but it is not statistically significant. In addition, a positive (but not statistically significant) correlation was determined to exist with the Ability to use an outside secure base. The direction of the obtained findings opens up the possibility that this strategy is one that individuals with a preoccupied pattern might be prone to, which supports previous research results (Pielage, Gerlsma, Schaap, 2000; Baker, 2006; Bartholomew, Horowitz, 1991). The analysis of these final results will only be possible after a repeat study on a larger sample.

(H3) A positive correlation was expected between avoidance-focused coping and the dimensions which indicate the negative aspects of attachment, and a negative correlation with the Ability to mentalize and the Ability to use an outside secure base. The results only partially confirm this hypothesis. Namely, there is a positive correlation between the Avoidance strategy and the dimensions of Fear of losing an outside secure base and the Ability to use an outside secure base, while all the other correlations are not statistically significant. The picture becomes much clearer if we look at the results obtained for specific avoidance strategies: Distraction and Social diversion. There is a statistically significant correlation between Distraction and the Negative working model of self and Negative working model of others, and thus Poor anger management and the Fear of using an outside secure base (a disorganized pattern of attachment), and between Social diversion and Using an outside secure base, Fear of losing an outside secure base and a Negative working model of self (the preoccupied pattern of

attachment). In addition, a statistically significant correlation was noted with Unresolved trauma. The obtained results partially support the results obtained in previous studies (Baker, 2006; Franczak, 2012). These findings require evaluation on a larger sample, but could currently be viewed in the light of predilections of individuals focused on social diversion for avoiding serious issues.

(H4) It is expected that it is possible to predict coping strategies based on the dimensions of affective attachment.

The research results only partly confirm these expectations. Primarily, based on the dimensions of affective attachment we could predict emotion-focused coping strategies (49.9 % of the variance). This finding is proof enough that individuals who develop a disorganized or preoccupied form of attachment in early interaction significantly struggle to deal with stress, or to cope with it effectively. Additional confirmation can also be found in the fact that the dimensions of affective attachment explain as much as 24.6% of the variance of the strategy of social diversion which is also typical of the preoccupied pattern. Over 20% of the variance (21.1%) of problem-focused strategies can be explained by the dimensions of AA, which is also not negligible and confirms the importance of nurturing high quality early interaction.

As a conclusion to the discussion of the obtained results, we will single out the most important points:

- Coping strategies are connected to patterns of affective attachment formed early on in life.
- Individuals with disorganized and preoccupied patterns of affective attachment are more prone to maladaptive strategies of coping with stress.
- Individuals with secure and avoidance patterns of affective attachment are more prone to adaptive strategies of coping with stress.

THE IMPLICATIONS AND DRAWBACKS OF THE RESEARCH

The implications of the research primarily refer to the possible education of guardians on the importance of early interaction. A positive working model of self as the common denominator of individuals with secure and avoidant affective attachment patterns represents the first and basic precondition of the effective strategies of coping with life or stress. The conclusion is logical from a common-sense point of view, but it is also confirmed by the findings, which certainly makes it more convincing.

The drawbacks are numerous. Primarily they refer to the size and structure of the sample. Except for the age and status of the participants, other significant socio-demographic variables were not controlled. In the upcoming research, the sample might be more homogenous in terms of gender and certainly significantly greater in number.

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СТРАТЕГИЈЕ ПРЕВЛАДАВАЊА СТРЕСА И ДИМЕНЗИЈЕ АФЕКТИВНЕ ВЕЗАНОСТИ КОД СТУДЕНАТА

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Резиме

Предмет истраживања је питање могуће повезаности различитих одговора на стрес са димензијама афективне везаности. Стратегије превладавања стреса делимо на: 1) Суочавање усмерено на проблем – односи се на решавање проблема или предузимање акције. Усмеравањем на проблем и решавањем проблема мења се однос особа–околина, било путем директне акције или когнитивним реконструисањем. 2) Суочавање усмерено на емоције – овај стил суочавања са стресом има функцију смањивања или лакшег подношења емоционалне напетости изазване стресном ситуацијом. Те стратегије директно не мењају стресну ситуацију. 3) Суочавање избегавањем – односи се на когнитивне, емоционалне или понашајне покушаје удаљавања било од извора стреса или од психичких и телесних реакција на стресор. Непредузимање или избегавање акција усмерених на проблем, негирање спознаје да се догађај десио, осамљивање, потискивање емоција, конзумирање алкохола и дрога, маштање, сањарење, вечерњи изласци и самодеструктивно понашање – неке су од избегавајућих стратегија. Ова категорија суочавања укључује и дистракцију и социјалну диверзију. Дистракција се односи на усмеравање ка новом задатаку који није повезан са стресном ситуацијом. Овај стил је маладаптиван. Социјална диверзија огледа се у појачаном дружењу са људима. Приликом суочавања са претњом, особа се окреће другима да не би мислила на проблем. И ова стратегија спада у маладаптивне. Од чега зависи наш избор? Да ли нас и поводом начина превладавања стреса одређује квалитет раних интеракција са мајком, односно старатељем. Квалитет афективне везаности процењиван је кроз седам димензија. Наиме, у покушају интеграције социјално персонолошког и клиничког приступа феномену везаности, дефинисан је и концепт разумевања квалитета везаности кроз димензије афективне везаности (Ханак, 2004): Неразрешена траума, Лоша регулација беса, Капацитет за ментализацију, Капацитет за коришћење спољашње базе сигурности, Страх од губитка спољашње базе сигурности, Негативна слика о себи, Негативна слика о другима. Већи број димензија омогућава нијансираније разумевање начина функционисања и психичког устројства личности. Због тога смо се у овом истраживању одлучиле за димензионални приступ. Са циљем испитивања наведеног односа, примењени су Упитник суочавања са стресним ситуацијама (ЦИСС, Ендлер и Паркер, 1990) и Упитник за процену димензија афективне везаности (УПИПАВ, Ханак, 2004), а узорак је чинило 152 студента Филозофског факултета. Резултати указују на постојање значајних корелација између начина суочавања са стресом и димензија афективне везаности. Конкретно, превладавање усмерено на проблем у негативној је корелацији са неразрешеном породичном трауматизацијом, страхом од коришћења спољашње базе сигурности и негативним моделом селфа, док је у позитивној корелацији са капацитетом за ментализацију. Превладавање усмерено на емоције и стратегија дистракције позитивно корелирају са страхом од коришћења спољашње базе сигурности, негативним моделом селфа и других и слабом регулацијом беса, при чему је превладавање усмерено на емоције позитивно повезано и са неразрешеном породичном трауматизацијом. На крају, социјална диверзија значајно негативно корелира са неразрешеном траумом и негативим модела селфа и позитивно са страхом и

коришћењем спољашње базе сигурности. Резултати регресионе анализе показују да наведене димензије афективне везаности као предиктори објашњавају 21,1% варијансе стратегије суочавања усмерене на проблем, 13,3% варијансе стратегије дистракције, 24,6% варијансе стратегије социјалне диверзије и чак 49,9% варијансе стратегије превладавања усмерене на емоције. За закључак дискусије добијених резултата издвојићемо само најважније:

- стратегије превладавања стреса повезане су са рано формираним обрасцима афективне везаности;
- особе са дезорганизованим и преокупираним обрасцем афективне везаности склоније су маладаптивним стратегијама суочавања са стресом;
- особе са сигурним и избегавајућим обрасцем афективне везаности склоније су адаптивнијим стратегијама суочавања са стресом.

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CONTEMPORARY PSYCHOANALYSIS – PERSPECTIVES AND THE SCIENTIFIC STATUS

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Abstract

This paper is actually a review of the status of psychoanalysis versus science. The lack of articles in contemporary discussions, and the absence of the topic of psychoanalysis suggests that there is less interest in the given topic. The impression is that the therapist who has the function of a patient does not have the time for other means of research and work. This supports the contemporary views that a therapist is, figuratively speaking, married to therapy and, therefore, cannot do anything for its sake. Strong criticism persisting even today is that addressed to Freud (in reference to relational psychoanalysis), arguing that he could not even bear to be seen as a warm and gentle figure by his patients. He is even known to have sat in a chair behind the headrest of the sofa used by the patient, in order to avoid looking the patients in the eyes, claiming it to be bothersome. The third century of the existence of psychoanalysis seems to be the time of questioning of whether the interest in this topic is disappearing. The corpus of psychoanalysis has been implemented throughout the 20th century. The general attitudes are that the analytical method has to change. Contemporary society wants quick results because the contemporary individual has little time. Psychoanalysis has always preferred the quiet, which now is a bad strategy, because very little has been done about its visibility and promotion.

Key words: unconsciousness, the scientific status of psychoanalysis, contemporary, approaches, the visibility of psychoanalysis.

САВРЕМЕНА ПСИХОАНАЛИЗА – ПЕРСПЕКТИВЕ И НАУЧНИ СТАТУС

Апстракт

Овај рад је приказ статуса психоанализе, као теорије и терапије у поређењу са науком. У актуелној литератури цитирају се референце старијег датума, што наводи на размишљање да понестаје интересовања за ову тему. Стиче се утисак да је терапеут само у функцији пацијента и нема времена за друге облике истраживања и рада. То иде у прилог савременим гледиштима да је терапеут посвећен терапији, те због ње саме не може да дела у корист ње. Једна од највећих замерки која се упућује

Фројду (унутар релационе психоанализе) јесте та што он није могао да поднесе да га пацијенти доживљавају као топлу и нежну фигуру. Фројд је чак седео на столици крај узглавља дивана на коме је лежао пацијент како не би морао да га гледа у очи, тврдећи да га то замара. Питање које се поставља у трећем веку постојања психоанализе јесте да ли понестаје интересовање за ову тему. Током двадесетог века утемељивао се корпус психоанализе. Општи став је да аналитички метод мора да се мења. Савремено друштво жели брзе резултате јер савремени човек пати од недостатка времена. Психоанализи је увек била дража тишина, што је сада погрешна стратегија, јер је веома мало учињено за њену видљивост, али и промоцију.

Кључне речи: несвесно, научни статус психоанализе, савремени приступи, видљивост психоанализе.

INTRODUCTION

The analyst is not the supreme arbitrator of truth. What is important is the process. The point is not set on the acquisition of (psychoanalytic, per se) truth, the truth about the unconscious. The process is important (Jevremović, 2005).

The historical development of psychoanalysis is bound to Freud who named it in 1896. He began creating the corpus of theoretical concepts and practical methods which only grew in the 20th century, due to the great number of its seriously dedicated authors and followers.

According to Zlopaša (2015), psychoanalysis is the oldest branch of psychotherapy which made possible the development of other fields, but changed itself, as well, due to internal and external factors. The internal factors refer to the accumulation of experience, failures, adaptation to pathology, the critical reconsideration and the changes in modern science. The external factors pertain to the period during which some other personality entities were being developed, hence their influence on the changes and the general scientific trends in the humanities. Commenting further, the author says that the issue of identifying the whole corpus of psychoanalysis with Freud's charismatic personality is a big problem and, at times, hinders the further growth of psychoanalysis. It often seems necessary to reiterate that psychoanalysis has not stopped developing after Freud, and that it does not currently aspire to remain within Freud's framework. The founder of psychoanalysis is Freud, but after Freud, psychoanalysis experienced its new beginning and further development.

Jevremović (2005) states that psychoanalysis is a matter of experience, always concrete experience, the experience of a concrete subject. The author speaks about experience in theory, as well as experience in practice, analytical practice – an inevitable paradoxical crash. Furthermore, he argues the direction of where high speculations lead, which inevitably coincide with the sphere of concrete, preverbal, infantile, phantasmatic, pre-linguistic and proto-linguistic, and the bodily. The range includes preverbal and secondary process thoughts, but the unthinkable as well. Then the author sets the focus on the unconscious, irrational, possible

madness (i.e. primary process) until it penetrates the subjective, defined as the important truth in the psychoanalysis. In doing so, he draws attention to the fact that psychoanalysis is an area of the mind that is very specific and delicate. It does not have the character of universality, but it has the character of repetition.

In Damjanović (2015), we see an interpretation according to which Wittgenstein challenged the acceptability of Freud's theory and called it "skillful" and "cunning". According to him, Wittgenstein does not consider that Freud created something revolutionary and brilliant, and basically, the unconscious for him is not a discovery. Following this line of thought, Freud is but a creator of a new mythology and a new conceptual framework, however he is neither the creator nor finder of any new regions of the soul. What Freud claims for the unconscious seems scientific (empirical hypothesis), but is actually only the medium for thought representation.

Other Wittgenstein attitudes towards psychoanalysis question the methodology and its sense exploring and criticizing its methodology. Psychoanalysis is considered in terms of the mental space through the paradigm of the unconscious and free associations, which present the symbol and show the battle of the urges in an individual. Thus, according to this philosopher: "Undertaking psychoanalysis is somewhat similar to eating from the tree of knowledge. Knowledge, which we gain in this manner, confronts us with new ethical issues; And nothing more" (Jandrić, 2017, p. 75-91).

Wittgenstein questions the whole concept of psychoanalysis. In the same text about the "Blue Book" Jandrić cites the following lines: "The idea that unconscious thoughts exist caused revolt in a large number of people. Others, however, said they were not right when supposing there are only conscious thoughts and that psychoanalysis revealed unconscious thoughts. Those who object the unconscious thoughts have not seen they have not objected the newly found psychological reactions, but the way they have been described" (Jandrić, 2017, p.75-91)

We will approach the consideration of the contemporary psychoanalysis from the perspective of science and pseudoscience. Psychoanalysis has already stepped into the third century of its existence, and there is a large number of research and publications which are referential and appreciated in science. It is frustrating, as always, how much material there is and how much cannot be said. Works and attitudes will be cited from the popular scene of psychoanalysis and psychodynamics from the experience of psychoanalytical authors of the epistemological, psychological, philosophical, scientific models in the period of three centuries. Currently there are referential authors, such as Stern, Fonagy, Gabard and Bornstein.

Sandler et al. (1998) saw contemporary psychoanalysis as a tripartite model or as the so-called "three box model." Psychoanalysis is a research method that assesses the growth of cognitive capacity and the expansion of

emotional learning about oneself and people, which is the direct effect of therapeutic work.

A LOOK BACK TO PSYCHOANALYSIS IN THE 20th CENTURY

It takes too long. Modern psychoanalysts are aware that the analytical method must change somewhat, because contemporary society is looking for quick results and contemporary individual has little time. In standard psychoanalysis, it is not always possible to achieve the goal of rapid change, because personality changes very slowly and insights are solidified over the years. In short analytical psychotherapy, existentialist-oriented, state-funded groups, many are expected to have faster results (Jevremović, 2010; Jalom, 2011).

Psychoanalysts have a hard time writing. It is interesting that older references are often cited in contemporary literature, which leads one to think whether there is a lack of interest in this topic. Sometimes the therapist seems to be in the patient's function only, and that the method itself is in isolation Psychoanalysis has always preferred silence in that sense, which is not an effective strategy for its popularization nowadays. Observing the modern trend of psychoanalysis, two directions are observed:

- One for reconstruction;
- And the other for nomothetic projects to provide a solid basis for exploring scientific evidence.

There are few articles lately dealing with this topic. Fonagy & Target (1997) conclude that psychoanalytic practice has deep limitations as a form of research, but that psychoanalytic theory can nevertheless be observed. In addition to that, ‘’’’modern science is almost exclusively interdisciplinary.

In fact, in the past 15-20 years, the field of neuroscience has been wide open with an adequate understanding of the determinants of development and adaptation. Fonagy (2003) believes that it is the right place for research and for brain function and expression of genetic potential. A number of studies have already suggested that the impact of psychotherapy can be seen in the changes in brain activity, using brain imaging techniques. “Clearly, the discipline can no longer exist on its own. Creating an analyst is an extremely long process. In order to be taken seriously, psychoanalysis, as a scientific study of the mind, must be included in systematic laboratory studies, epidemiological research, or qualitative research in the social sciences” (Fonagy, 2003, p. 73).

Considering Michel’s opinion, Fonagy (2003) says that no experiment or set of experiments will ever serve as an arbitrary opinion of something as complex and resilient as psychoanalytic theory, but directs the strategy of modernizing the method of psychoanalysis, and states that “our goal should

be to help move psychoanalysis towards science" (Fonagy, 2003, str. 74). The strategy advocates:

- Reinforcing the evidence base of psychoanalysis by adopting additional collection methods;
- Changing the logic of psychoanalytic discourse from its over-reliance on rhetoric and global constructs. This means adjusting the use of specific constructs that enable cumulative data collection;
- Revising certain deficiencies in psychoanalytic scientific reasoning, especially where failure falls into consideration of alternative observations;
- Isolating psychoanalysis should be replaced by active collaboration with other mental health disciplines,
- a rapidly evolving "chain of knowledge" directed at different levels of studying the relationship between brain and behavior, that this may be the only way to preserve the hard-won insights of psychoanalysis.

Paul Stepansky dealt with the history of psychological work and psychoanalysis in particular. Dimitrijević (2011, str. 206) refers to Stepansky's efforts to apply the scientific language, in order "to change things in psychoanalysis and move it towards science."

Stepansky has been ubiquitous in educating psychoanalysts for the last three decades. He was the editor-in-chief of The Analytic Press journal, which was once the most important ones, and the only one in America. The analytic journal has set the highest standard for rigorous scientific and clinical case presentation. In discussing the survival of psychoanalysis, he concludes that there are only two paths:

- communicating with the scientific fields and applied fields as a nurturing trend of association with psychotherapy, and
- Openness towards other professions.

Stepansky believes that the recovery of psychoanalysis would be truly useful to society and science on the whole. The failure to observe his argument, may cause a stagnancy in the future development of psychoanalysis.

Stepansky says: "The survival of a profession in a foreseeable future lies behind a couch and out of the office" (according Dimitrijević, 2011, pp. 312). Following this line of thought, Stepansky warns us of the marginalization and fragmentation within contemporary American psychoanalysis that would need to be modernized. Most psychoanalysts can agree on basic analytical facts, but serious problems arise at the level of their interpretation. At one very important moment in psychoanalysis and psychiatry, one can see that there was a great connection. Psychoanalysis was technically established in accordance with the patient's disorder and the established duration in the treatment even with the most serious disorders.

Paris (2017), while giving a comment on the connection between psychiatric and clinical method, considers the possibility of exploring the evidence. Is the psychoanalytical treatment based on evidence? Can psychiatry and psychotherapy be of use to one another? Answering these questions, he says that: "modern medicine and psychiatry expect all kinds of therapy to be supported by evidence. Psychoanalysts claimed it to be a science but did not succeed in operationalizing its hypotheses therefore the intellectual method of psychoanalysis is more similar to the humanities. In Britain, the humanities can have their dynamic guidance experts modeled while accepting significant deviation from the psychoanalytic conceptualization" (Paris, 2017, p. 321).

The attempt to connect psychoanalysis to science and finally stand under a psychiatric umbrella relied on a hermeneutical way of thinking that focuses on meaningful interpretations of the phenomenon rather than empirical testing of the hypotheses and observations. This is sometimes completely impossible in psychoanalytic methodology, but there is a tendency to find a nomothetic model that would rely on a non-existent scientific corpus. Further, Paris (2017) says that Mark Solms, a South African neuropsychologist, the founder of neuro-psychoanalysis, suggested using neuro-imaging to confirm analytical theories. His key idea is that subjective experience and the unconscious mind can be viewed through neuro-imaging. However, Paris, reminds us that brain processes cannot be seen on brain imaging before they are brought to consciousness. Hereby, neuro-dimensional validation of Freud's model of the unconscious cannot be explicitly proved. The correspondences observed are superficial and hardly support the complex edifice of psychoanalytic theory.

The conclusions that Paris (2017) reaches are quoted from an article so they are presented in the paper as a proposition that:

- Analysis has been separated from psychiatry and psychology and that their method is applied in independent institutes;
- A method can last only if it is ready to reform its structure as a separate discipline and to join the academy and the clinical science;
- Regardless of the limitations, psychoanalysis has left a great heritage to psychiatry;
- It taught generations of psychiatrists how to understand life histories and to carefully listen to what patients say;
- In an era dominated by neurosciences, diagnostic control lists and psychopharmacology, we have to find a way to keep psychoanalysis, whose basic terms came from Freud's work, and find their place in the science of psychiatry as well.

Dimitrijević (2015) states that the psychiatric path was also difficult, so the birth of scientific psychiatry and what we now call clinical psychiatry took place in the short period between the last decade of the eighteenth century and the 1820. Everything that happened before that

period - every description, diagnosis and therapy - was considered pre-scientific, outdated, and, in a way, worthless.

Dimitrijević, gives the argument that the first steps and roots of modern psychiatry began in England in the early modern period, so that in the field of mental health care modern continuity has been achieved. Then he says that the similarities between contemporary psychopathology and that of early modern England are striking. The concepts of possession and exorcism have been overturned, but we are still discussing the relationship between psychological and "external" factors in psychopathology. The mental disorders we encounter in our clinical practices were described four centuries ago. The public experience of the mentally ill is more affirmative than it used to be, but in the last five decades the stigma has been steadily increasing. Our approaches to treatment are not as bizarre as they used to be, but their effectiveness is far from perfect. If, however, we want to continue to improve, it may be important to remain aware of the continuity and roots of contemporary psychopathology that spans at least four and a half centuries (Dimitrijević, 2015).

A complex representation like this one reaches the existential foundations of psychiatry, i.e. brings to us to rethink the concept. And the path taken by psychiatry and psychoanalysis seems to be related primarily to an in-depth approach to understanding the problem, and that the question of **why** determining topography was shorter than the question of **how**, which determined phenomenology as a competent addition to understanding mental illnesses.

THE PERSPECTIVES OF CONTEMPORARY PSYCHOANALYSIS

In the world of science, Jalom says that psychologists, psychiatrists and psychotherapists are the intellectual elite, e.g. Jalom (2011). However, it is not rare that a patient in therapy and a psychiatric patient are equally stigmatized just like a psychotherapist and a psychiatrist.

Nowadays, relational psychoanalysis is becoming a common topic.

The official portal of the Croatian Psychoanalytic Society presents a few contemporary modalities of the method of psychoanalysis: "Relational (interpersonal) psychoanalysis, as the approach by the founder, Steven Mitchell (1946-2000), in the United States, rejected Freud's biologically entrenched theory of urge, suggested a theory of interpersonal conflict that combines real, thoughtful, and imagined interactions with significant others. Also, Psychoanalysis is then made to explore these patterns and confront with what is spontaneously and authentically co-opted in the psychoanalytic setting between the analyst and the patient" (www.hpsg.hr).

In addition, Belgrade Psychoanalytic Society (2018) emphasizes that: "Adhering to the golden rule of non-directionality and the rule of directing our attention to the actual surface of what the analysis provides

us has made it possible to identify the most important phenomenon that occurs during psychoanalysis, and that is transfer" (www.bps.org.rs).

"The psychoanalytic method is considered to be a specific research method in the field of the human psyche and the unconscious. Today there are modifications of the psychoanalytic method which are used in the observation of the psychoanalytical effects, as well as the understanding of the process of change as a whole which is urged by psychoanalysis, either with clients or psychoanalysts)." (www.bps.org.rs/psihoanaliza)

Both the Serbian and Croatian schools were being greatly developed in the 20th century. Both schools follow the current trends of psychoanalysis.

At the end of the 20th century great changes occurred in psychoanalysis in understanding the disorders of the personality structures, the mode of intervention, the counter-transfer, shaping according to the needs of the patient in technology, while the basis of instinctive theory also underwent some changes. So we distinguish a few practitioners from the classical Freudian psychoanalysis, the psychoanalysis of Klein, the self-object theories to the interpersonal and intersubjective approaches. Therefore, there are several branches of the psychodynamic approach starting from the classic Freudian psychoanalysis, Kleinian psychoanalysis, self-object theories to the inter-subjective approaches.

The ultimate domain in psychoanalysis is the interpretation of dreams. As an imperial journey into the unconscious, it will undermine what made psychoanalysis indebted to science. Aron (1989, p. 79) claims that the basic approach in dream interpretation has changed: "For Freudians the key question is: what does it actually means? For inter-personalists the question is: what is happening here?"

"The interpretation of dreams, in the traditional sense, does not play a big role in the work of most interpersonal analysts. Not that dreams were ignored, but that there was no attempt to decipher. They are treated as communication, not puzzles, so the analyst asks what the dream says, not what it means. The free association method seems ideally suited to the purpose of excavating buried, hidden, and covered up latent content. But where the classic model encourages to emerge, beneath the disjointed, "analyzing," deciphering, manifest appearance, the interpersonal model seeks an expansion of experience by carefully focusing on the surface. The inter-personalist holds the magnifying glass across the surface in an attempt to see the subtlest experiences. We have seen various revisionist interventions with focus on the manifestation of content" (Aron, 1989, p. 73).

Further on, Aron (1989) says that dreams are specific in the clinical situation, especially because they lie as stories on the optimal distance between the everyday future and worry on one side, and the unconscious fantasy, autistic, indescribable thoughts and chaotic images, on the other. Conversing about a dream is organized, transferable, descriptive and to a great extent cohesive and coherent. Still, dreams are also our most striking communications.

As Aron notes: „Together it connects the underworld of our desires and its integration with the rest of our autobiography results in further consolidation. Dreams, which may seem very trivial, provide a distance that allows one to explore the most serious problems. However, even the most difficult questions, when approached through the dream story, can be creatively worked on and played into, and thus give a sense of hope" (Aron, 1989, p. 125).

Many great 20th century scientists fought to find the model for psychoanalytical method between nomothetic and idiographic research. For example, Bornstein (2001) says that a conceptual framework represents an aggregate of proximal rules for the construction of nomothetic research for testing psychoanalytic hypotheses, especially because psychoanalytic method is idiographic in nature. It is also important to make wider comprehensive principles which can better nomothetic research of psychoanalysis through recognizing the unique possibilities and challenges in psychoanalytic data. He describes 5 such principles:

> "Principle 1: Incorporate each psychodynamic hypothesis into concepts with other aspects of psychoanalytic theory. Nomothetic psychoanalysis provides an opportunity for psychoanalytic researchers to pay greater attention to external facts where psychoanalytic attitudes and constructs are consistent with the principles and findings of other scientific fields;
> Principle 2: Recognize that certain types of data cannot be obtained in the laboratory, and that certain types of data cannot be obtained in the consultation room;
> Principle 3: Systematize guidelines for the collection and reporting of idiographic psychoanalytic data;
> Principle 4: Use similar outcome measures in idiographic and nomothetic studies;
> Principle 5: Pay special attention to variance indicators in nomothetic research" (Bornstein, 2001, p. 5).

In addition, he symbolically defines the following 7 deadly sins:

1. Insular communication in a narrow circle of like-minded;
2. Imprecision (concepts supported by empirical evidence are not separated from the ones which are not);
3. Loss of interest (disinterest for a different opinion) leads to exclusion and indifference to outer experience;
4. Unimportance, irrelevance of psychoanalysis in a scientific community is, for the most part, a consequence of psychoanalysts unrecognizing such a status. They do not recognize the marginalization of their theory and do nothing about it;
5. Inefficiency, extensive theoretical background and the longevity of a psychotherapeutic treatment even then when it is not necessary;

6. Vagueness makes a theory unfit for empirical check hence excluding theoretical progress and degrades work both in theory and psychotherapy, unwillingness to acknowledge the problem and work on it;
7. Arrogance (a closed system supports separation from other circles, ideas, while the power of authority threatens every novelty, gains rigid characteristics (Bornstein, 2001, pp. 5-9).

According to Bornstein there are three scenarios that could save psychoanalysis from "illness" in metaphor.

> "Scenario 1: Implement heroic measures to save the patient through a shift towards a major effort in research activities and empirical evidence of psychoanalysis concepts with a move toward integrative approaches that are in contact with medicine and general psychology.
> Scenario 2: Let psychoanalysis die and then donate organs, or Let her concepts survive in contact with other directions. So, psychoanalysis and other directions could survive, as it has already been confirmed that many parts of psychoanalytic theory and concepts have survived assimilation and involvement in empirical and clinical research.
> Scenario 3: Bury the body and pray for reincarnation, or, rejection and renunciation of psychoanalysis as it is today in order for its useful parts to undergo reality checks and survive. Certain concepts of psychoanalysis are already deeply rooted in general psychology and the social sciences, so it is certain that some other useful concepts might have such a fate" (Bornstein, 2001, pp. 10).

Accordingly, Bornstein (2001, pp. 15) considers psychoanalysis to be a: method of treatment, "and not only a theoretical science, has to provide empirical evidence on therapeutic treatment efficiency, to undergo transformations, while heading to new ideas and knowledge, to continuously starts debates inside a psychoanalytic community, to come closer to nomothetic scientific method, so as not to remain outdated provocative theory which is dying."

The possibility to set both biological and psychological - social base of psychoanalysis through neuroscience and nomothetic research is nowadays discussed.

An introduction to Bornstein's (2005) consideration of various resuscitation strategies for bringing psychoanalysis to life, states that the marginalized state of contemporary psychoanalysis is partly due to psychoanalysts and their willingness to keep their ideas silent from the credibility of theorists and researchers. This is, in fact, a revision of his earlier proposal that it is necessary to separate psychoanalysis as a discipline from contemporary science and psychology.

With the suggestion of a remedy reflected in the repair and movement and dynamics of twentieth-century psychoanalysis in its most basic form, Bornstein (2007) emphasizes the following three steps.

- Step 1: to enable an audit and repetition;
- Step 2: to create an empirical database;
- Step 3: to recognize and parallel psychotherapy methods.

The consequence of this would be the reintegration and association to other methods. What would significantly increase the scientific value of psychoanalysis in addition to nomothetic and ideographic is the meta-analytic research. Bornstein (2007) says that meta-analytic techniques have a long history in psychology, and can simply connect with the proportions of the studies, which are statistically important. Meta-analytic techniques enable researchers to estimate the influence of mitigating the variables of the phenomenon in question, even if some of the variables are different in studies (not from within). When the techniques of neuropsychological evaluation become central in the testing and verification of the fixation of psychoanalytical ideas, we will come to a full circle, Freud's first outlines of psychoanalysis were derived from biological principles, as well as psychological ones, and much of his early urge model was framed by the language of 19th century physiology.

Postmodern science offers various possibilities for reconnection of psychoanalysis to psychology. In the near future, psychoanalysis needs to regain even those ideas co-opted by other disciplines and connect to those very same disciplines for empirical inspiration (Wallerstein, 2009). The complexity of these questions should be researched at large, definitely even semantically, as methodologically and essentially, by applying qualitative (idiographic) and quantitative (nomothetic) research methodologies.

Some theoretical attitudes in the Serbian scene regard the present moment as unsuitable for the preservation of the classical long psychoanalysis, which is partly conditioned by the social moment itself.

The view of Jevremović (2010) is quite interesting because he really manages to connect history, philosophy, theology, metaphysics and psychotherapy. Jevremović asked the question of how we understand psychoanalysis throughout his work. We cannot be indifferent to whether we consider psychotherapy (theory) and exercise as a vocation or as a skill technique. If psychotherapy is a mere skill, i.e. a technique, then it has market value. Modern society is market oriented. Psychoanalysis is therefore impaired because it is limited by the demands of contemporary society, which wants faster results and an immediate solution The author considers there are many strongholds in which psychoanalysis has proven to be a science. The goals of psychoanalysis need to be retained because they give it scientific meaning.

Zlopaša (2015) believes that any critique of psychoanalysis would require prior understanding of the process and its therapeutic goals. In further elaboration on Freud's thoughts, Zlopaša says: "Freud boldly, sometimes recklessly, entered the field of anthropology, evolution, culture and art, group and social dynamics… At the same time he feared the

medicalization of psychoanalysis, which would make it a transient trend in the field of psychiatry. So, he tried to chart a course of psychoanalysis through the strait of 'Scile and Haribde' of medicine and philosophy, occasionally relying on both sides without allowing any of them to be too drawn to him, which would mark the loss of an independent path of development. The Freudian unconscious, they prepare and organize our experience before they reach consciousness" (Zlopaša, 2015, pp. 57).

This article also focuses on the neurosciences that are known to confirm the complexity of the neural processes and are trans-material entities that underlie the psychic life, which is indeed a facsimile role of the CNS. Most of the processes of evaluation and emotional coloring take place on an unconscious plane, with only a portion being finely cognitively processed in the form of conscious thoughts. Zlopaša (2015) goes on to consider that the hemispheric specialization and function of the right hemisphere have deep links with the physiological determination of the notion of the unconscious. He remarks that this also opens the question of the terminology of the unconscious. Freud did not invent it unconsciously, nor could he find it as some material, external, biological artifact. It really touches both neuroscience and physiology. Measurements are not possible yet, but the evaluations of clinical improvements to patients are still possible.

In contemporary neurology it is known that most of the processes of evaluating the emotional coloring go on the unconscious plane and that only a part is finally processed cognitively in the manner of a conscious thought. Zlopaša (2015) points out that the functions of the right hemisphere deal with emotional experiences and therefore influence the recognition of the imprinted, which implies they have a role in repressing and processing information. This would confirm somewhere in Freud's lifelong occupation with physiology.

In this paper, addressing the field of modern psychoanalysis from the perspective of science and pseudoscience, and the continued survival of psychoanalysis, the attitude of psychoanalysts themselves to this problem is striking.

Cozolino (2014), in the work of analyzing neurosciences, considers that neurological processing involves the unconscious. The preparation and organization of our experience is a filter that brings to consciousness what comes from the unconscious. A greater part of psychotherapy is considered with detecting, understanding and fixing the content, and the organization of those hidden layers. Most of the processes of evaluating the emotional coloring occur on the unconscious plane. Only a part is final and only the cognitive thought is conscious, which is a part of the synthetic function of the cerebral cortex. That would confirm Freud's life-long occupation with physiology.

The instrument of professional (scientific) communication from Freud to this day, is a "Case report". They are good articles and reviews, which have a professional aspect and represent the gravity of acts well.

So far, we have followed the research in which the conditions of scientific work, sample, and description of the strategy of methodology research, as well as statistical techniques. Hereby the requirement of science and the requirement of verifiability are fulfilled. For case studies, this condition is elusive.

Obviously, much work was done in the 20th and at the beginning of the 21st century to demonstrate the scientific method in psychoanalysis.

The works of Stepansky & Bornstain are very extensive and, most importantly, verifiable. Linking to neuroscience even enables neurophysiological measurement. One of the conditions of objective measurement is the existence of proven instruments and techniques of measurement, which has already been achieved in the neurological sciences. Some PET scanner devices, e.g. MR, also provide some CNS visualization. Modern receptor theories and the pharmaceutical lobby are forcing research into neuro-receptors and synapses.

DISCUSSION

In her work," *Psychoanalysis and its paths"*, Élisabeth Roudinesco tries to defend the science of psychoanalysis. In the first instance, she turns to the works of Sokal and Bricmont, followed by their attempt to refute the science of Psychoanalysis by criticizing Lacan's work. Her report is quite extensive and what she presents in defense of psychoanalysis is the conclusion that the previously mentioned authors: "are both incapable of choosing and putting any piece of work they do not know to read and interpret into their context" (Roudinesco, 2005, pp. 93). What these critics resent is the fact that they, for many reasons, have taken the controversial work of Lacan as a platform for criticizing the whole of psychoanalysis. More interesting to us, however, is the second, more affirmative domain of her proof of the science of psychoanalysis. If we look into it more broadly, it greatly corresponds to the contemporary view of science. Specifically, since the second half of the twentieth century, the criterion of science has been the explanatory power and the power of prediction, not absolute coincidence with truth. In fact, even in the natural sciences, we cannot count on the absolute certainty of the hypotheses - there always remains the part that is accessible to further rational processing. It is even clearer in the domain of scientific revolution when "a dominant model is being doubted…" (Roudinesco, 2005, p. 95) and the whole focus of the research is changed. This often leads to the formation of new terminology and to the connection of something that was not considered in any way related until then. Bearing this in mind Roudinesco effectively puts Freud's psychoanalysis in relation

to the whole stream of modern science, in the sense by which the mysteriously explained phenomena, e.g. dreams, he explains in a rational way.

So psychoanalysis has, since the emergence of Freud's interpretation of dreams, to this day, maintained the technique of understanding the unconscious and a valid range of technical instruments without which it is still impossible imagine therapy. It links it to neurophysiology where you can build certain scientific hypotheses. Many analysts believe that the therapeutic process does not exist without analyzing the patient's dreams that serve to understand the patient's unconscious. It was always impossible to understand the inner processes and the world of the unconscious without dreaming. Thus, the dream is a diagnostic instrument for both stability and resistance. A dream is also an insight into how the patient self-communicates with the object. That is why modern analysts are trying to save standard therapy procedures from the demands of the new age, which is the immanence to rush: as quickly and as quickly as possible, an approach that need not offer more effective results.

Today, psychoanalysts have been rebuked for the fact that standard therapy procedures have been the same for centuries, and even longer. Free association remains the basic method in psychoanalysis, and it might be for as long as psychoanalysis exists. It is the unit of process building. It is necessary to measure the efforts of both the patient and the therapist to reach an alliance in which they will always proceed in the same way and in the same place. So the instruments are still the setting and transfer, resistance, analyzability, interventions, countertransference, dream interpretation and achieving change.

These are the fundamentals of the existence of therapy in which the principle or main method is the free association of the patient. It can be said with certainty that: "The method of free joining gives fundamental context in which the analyst fights with the paradoxical clinical request that he or she be open to what the patient says, to what is new, to surprise, while at the same time handling the previous experience and theoretical models. Free Association supplies methodological structure in which the analyst struggles to keep the balance between involvement and observation, and between the focus on the past, current life and transfer. Free association is a method which enables patients to unify a task and explore their internal world, and work of their minds, with an interpersonal relationship with the analyst" (Aron, 1990, pp. 475). Then, on the same page, Aaron, says that replacing Freud's reflection method with an interpersonal presence does not mean that the patient's therapy was contaminated with the therapist's needs: "It is not my goal to adjust the patient to the therapist, but to tailor the therapy to the patient… My argument for the theory of two-membered or relational field should not be confused with the attempt to eliminate intra-psychics, negating the importance of fantasy and psychic reality or the centrality of bodily and childhood experience" (Aron, 1990, pp. 475).

Certain changes in the understanding of the process in the twenty-first century are related to the partial abandonment of methods of reflection by interpersonal presence in therapy. This does not mean that the patient's contamination with the therapist's needs has occurred, but that it has been imposed as an opportunity for a new type of research. The problem Aaron has dealt with revolves around pulling metapsychology across a relational construct into a scientific framework where there are more than two subjects in therapy. In fact, here Aaron also introduces the analytic subject as a potential measure of research that would examine the a priori between two people. This immediately increases the ability to track analytics and transfers. This is important for future research, though certainly an intersubjective approach would be tuned to the nomothetical research and case reports. "In the mental life of an individual, someone else is constantly involved, as a model, as an object, as an assistant, as an adversary," and "in this extended, but quite justifiable sense of the word, social psychology is at the same time both within a contextual and intersubjective framework" (Aron, 1990, pp. 475).

Today, research focuses on the possibility of crossing different parameters and the ability to create a prospective study that would last for many years and capture different segments of the therapeutic process. Thus, it would be easier to fulfill the hypothetical character of the method's science, but also the possibility that such a theory would later be replaced by a theory of greater likelihood and greater scientific recognition. It is similar to neurophysiological research, e.g. the function of the cerebral cortex is considered through hypothetical theories and this would be the assumption that none of the brain impressions has failed. So the neurophysiological evidence of the unconscious exists as well as the evidence of suppression. Therefore, in neurophysiology, we have moved far ahead of Freud.

Finally, the question may be raised whether contemporary psychoanalysis would meet the scientific criteria and its capacity to perform research ventures.

The reviewed papers have been published in reputable journals and present many years of research into the connection between the practice and the theoretical corpus of psychoanalysis, as well as the creation of a suitable and scientific experiment. It has been shown that the publications discussed here are published in such journals that undergo quantitative and qualitative analyses.

The reproducibility of the results of the scientific work is complete, as each methodology, research procedures, statistical procedures and results are described in detail. These standard checks are satisfied, as well as the psychometric approach, which is also a requirement for measurements.

The scientific criteria are constantly growing and the corpus of knowledge must adapt to the new ones. The development of psychoanalysis

is going in a good direction. Science is required not to endorse or market untested practices and products.

Jevremović (2010) is talking about the structure of the megalopolis of psychotherapy, where psychoanalysis is in the suburb. The danger of trivialization is great. Psychoanalysis is very serious and there is no compromise with any other forms of the inconceivable. That is why this rigor in patient selection and traditionality is perhaps the greatest sin, but also the value of psychoanalysis. What makes psychoanalysis always fresh is the work alliance, the supervisory work and the "let's think together." spirit. What makes it traditional is the respect for the patient's privacy, as well as his life without any return services. It is the rigorous and implacable abstinence rule since Freud.

CONCLUSION ON THE PERSPECTIVES OF PSYCHOANALYSIS

Contemporary psychoanalysis cannot be a science until it has completely rejected its subjectivity and begun to rely on empirical research experiences whose results are verifiable. Psychoanalysis should not be advertised, but it must come out of isolation and communicate with all the sciences, using all knowledge.

The corpus of psychoanalysis is impressive. The perspective of psychoanalysis is determined by the degree of the investment of society in science, as well as the development of educational systems that will enable the faster creation of experts. That would still be the path of psychoanalysis.

The road to science implies the continuous work with patients, as well as individual work. The patient and the therapist are an alliance. Their meeting makes sense of the events in both participants, certainly in the setting and in the life of therapy. The perspective of building a new relationship inevitably depends on that. It is considered that the problem today is not only the education of staff, which is inexorably long, but also the length of treatment.

Given that in reaching ourselves we embark on an adventure of the two, at the beginning or at the end of all the modalities the patient undergoes, the psychoanalytic method remains. Because psychoanalysis has balanced, all these years, between psychiatry and psychology, giving phenomena an expression of the interpretation of psychodynamics, it has fully explained certain illnesses and personality development, and can never be challenged.

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САВРЕМЕНА ПСИХОАНАЛИЗА – ПЕРСПЕКТИВЕ И НАУЧНИ СТАТУС

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Резиме

Кроз двадесети век утемељивао се корпус психоанализе. Многи угледни аутори припадници психоаналитичке школе настојали су да прилагоде научни метод и докажу да психоанализа даје резултате. Где је психоанализа данас и који је концепт приближава науци?

У овом раду се истичу савремена настојања да се психоанализа истраживачки повеже са неуронаукама. То даје одређену наду да се ефекат психоаналитичког метода може и забележити. Психоаналитичарима свакако можемо замерити херметичност на пољу објављивања достигнућа, али се од средине прошлога века ситуација мења. Постоји тенденција ка прављењу научне базе. С друге стране, научни критеријуми стално расту, те се постојећи корпус знања стално мора прилагођавати новим знањима, при чему је психоанализи замерано да се недовољно ради на томе. Данас се разматра могућност да се кроз неуронауку и номотетска истраживања постави биолошка, психолошка и социјална основа психоанализе. Многи угледни аналитичари су у току 20. века покушали да направе студије и стратегију за научну методологију психоанализе. Фонаги (1997) закључује да психоаналитичка пракса има дубока ограничења као облик истраживања, као и да се психоаналитичка теорија уопште може посматрати.

Модерна наука је готово искључиво интердисциплинарна. У ствари, у протеклих 15–20 година, област неуронауке брзо је напредовала. Фонаги (2001) сматра да је то право место за истраживање функционисања мозга и изражавање генетског потенцијала. Низ спроведених студија указао је на то да се утицај психотерапије може видети у променама у можданим активностима, користећи технике снимања мозга. Степански верује да би опоравак психоанализе био истински користан за друштво и науку у целини. Ако се ово не увиди, прети скрајнутост психоанализе. Степански каже да „...опстанак професије у догледној будућности лежи иза кауча и изван просторије за консултације" (Димитријевић, 2011: 312).

Покушај да се психоанализа повеже са науком и да коначно стане под психијатријски кишобран ослонио се на херменеутички начин размишљања, који се усредсређује на смислене интерпретације феномена, а не на емпиријско тестирање хипотеза и запажања. Оно што чини психоанализу свежом јесте радна алијанса, супервизијски рад „хајде да мислимо заједно", затим и правило апстиненције и поштовање пацијентове приватности, као и његовог живота без икаквих повратних услуга. То ће увек остати обавезни део терапијског уговора, који је услов за даљи живот аналитичког пара.

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ЛГБТ ОСОБЕ У СРБИЈИ: ИЗМЕЂУ ФОРМАЛНОГ ПРИХВАТАЊА И НЕФОРМАЛНОГ ОДБАЦИВАЊА [a]

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Апстракт

Европеизација се, уопштено, дефинише као „процес у којем државе усвајају правила ЕУ". Док се Србија приближава Европској унији, овај процес постаје све интензивнији, али се не одвија без проблема и застоја. Формални напори усмерени на промену друштвеног статуса ЛГБТ особа у Србији представљају пример описаног процеса, јер су повезани са идејом европеизације. У складу са условима ЕУ, усвојени су бројни закони усмерени на борбу против дискриминације ЛГБТ особа, реализовани су програми са истим циљем, а уз то је одржано неколико Парада поноса без већих инцидената (будући да је Београд био „под опсадом" јаких полицијских снага). Истовремено, високи државни званичници јавно показују отклон према нехетеросексуалним особама, а полиција пружа индиректни отпор организовању Прајда.

Државне акције које афирмишу ЛГБТ популацију карактерише краткотрајност и површност, што чини овај случај парадигматичним кад је у питању став Владе Србије према европеизацији: испуњавају се формалне обавезе (као наметнуте), а истовремено се предузимају велики (неформални) напори да у друштву не дође до промена. Циљ овог рада је да се демонстрира наведено.

Чини се да покушаји дифузије правила и прописа ЕУ не могу да рачунају на успех без локалног прилагођавања, те без узимања у обзир тумачења, прихватања и отпора које ове норме изазивају.

Кључне речи: ЛГБТ, Србија, европеизација, формална правила, неформалне праксе.

[a] Рад је настао у оквиру пројекта Closing the Gap Between Formal and Informal Institutions in the Balkans (INFORM), који је финансиран из програма Европске уније за истраживања и иновације HORIZON 2020, у складу са споразумом о додели средстава № 6935237.

LGBT PERSONS IN SERBIA: BETWEEN FORMAL ACCEPTANCE AND INFORMAL REJECTION

Abstract

Generally speaking, Europeanization is defined as "a process in which states adopt EU rules". As Serbia is getting closer to the EU, this process is gaining on the momentum, but running far from smoothly. Formal endeavors aimed at the change of the social status of the LGBT persons in Serbia are a case in point, as they are linked to the idea of Europeanization. In accordance with the EU conditions, a number of laws aimed at fighting discrimination of LGBTs were passed, programs with the same goal were implemented, and several Pride Parades took place without major incidents (as Belgrade was "besieged" by heavy police forces). At the same time, high state officials publicly manifest their reluctance toward non-heterosexuals, with the police practicing indirect resistance toward organizing the Pride.

The LGBT affirming actions were characterized by short time-span and superficiality, and this is what makes this case a paradigmatic one of the Serbian Government's attitude to Europeanization: the formal obligations (as imposed) are fulfilled, while simultaneously enormous (informal) efforts are undertaken in order that no changes occur in society. The goal of this paper is to demonstrate the aforementioned. Attempts to diffuse EU rules and regulations seem to be of no avail if local adaptation, interpretation and appropriation of these norms and resistance which they spawn, is not taken into account.

Key words: LGBT, Serbia, Europeanization, Formal norms, Informal practices.

УВОД: КОНТЕКСТ ЕВРОПЕИЗАЦИЈЕ

У последњих неколико година, у Србији је спроведен низ мера у циљу побољшања друштвеног положаја ЛГБТ[1] особа: усвојен је низ закона који су садржали одредбе усмерене на борбу против дискриминације нехетеросексуалних особа, спроведени су програми и састављени акциони планови са истим циљем, а уз то је одржано неколико „Парада поноса" без већих инцидената. Непосредни и интензивни подстрек за овакво деловање дошао је из Европске уније (у контексту борбе против свих облика дискриминације), којој, у смислу постајања чланицом, Србија тежи – што је изричито потврђено као стратешко опредељење доношењем *Резолуције о придруживању*

[1] У овом раду ће за означавање особа нехетеросексуалне оријентације и/или неконвенционалног родног идентитета бити коришћена скраћеница ЛГБТ – из практичних разлога, будући да је већ прихваћена у јавном дискурсу, у коме је, треба напоменути, заступљеност лезбијки и гејева много већа у односу на бисексуалне и транс особе. Иначе, постоје и дуже варијанте акронима, попут: LGBTTIQ – лезбијке, гејеви, бисексуалне, трансродне, трансексуалне, интерсексуалне и квир особе (в. Јарић, 2011; Радоман, 2017), или: LGBTTIA2SQQ – лезбијке, геј, бисексуалне, транссексуалне, трансродне, интерсекс, асексуалне, 2S (људи са „две душе", енгл. *two-spirited*), квир (енгл. *queer*) и особе које испитују своје опредељење (енгл. *questioning*) – (Група организација, 2015).

Европској унији у Народној скупштини Републике Србије још октобра 2004. године[2].

Могло би да се каже да је европеизација – „процес кроз који државе усвајају правила ЕУ" (Schimmelfennig & Sedelmeier, 2005, 7) – Србије *формално* отпочела преговорима Европске уније и Србије и Црне Горе о закључењу „Споразума о стабилизацији и придруживању" октобра 2005. године. Иначе, Радели даје нешто сложенију дефиницију европеизације када пише да је чине

> процеси а) изградње, б) дифузије и в) институционализације формалних и неформалних правила, процедура, парадигми јавних политика, стилова, „начина како се ствари раде" и заједничких уверења и норми који су најпре дефинисани и утврђени у ЕУ кроз стварање јавних политика и затим уграђени у логику домаћег (државног и регионалног) дискурса, политичких структура и јавних политика (Radaelli, 2004, 3).

Пут Србије ка Европи био је и, по свему судећи, остаје пун препрека и заобилазница, застоја, али и узмицања (видети у: Subotić, 2010). То не чуди ако се узму у обзир: (релативна) скорашњост оружаних конфликата и нерешено питање територијалног суверенитета и интегритета, привредни колапс (без јасног смера економског опоравка на видику), слаба владавина права и одсуство независног судства, државна контрола медија (Subotić, 2017). Ушанчени политички систем неопатримонијализма – феномен „заробљавања државе" (*state capture*; Pešić, 2007) и велики број овим изазваних проблема отежава преображај и демократизацију друштвеног живота у Србији и његово довођење у склад са принципима Европске уније – „спољни подстицаји не дају резултат када држава нема капацитета за спровођење своје политике и не контролише све структуре потребне за то" (Stojanović, 2013, 69).

Као политички услов за приступање Унији наводи се да држава кандидат мора да има „стабилне институције које гарантују демократију, владавину права, људска права и поштовање и заштиту

[2] Србија је направила први корак ка европским интеграцијама 8. октобра 2000. године, када се тадашња Савезна Република Југославија прикључила „Процесу стабилизације и придруживања". За кратак историјат односа Србије и ЕУ видети страницу Министарства за европске интеграције Владе Србије: http://www.mei.gov.rs/src/srbija-i-eu/istorijat-odnosa-srbije-i-eu/.

мањина"[3]. Као један сегмент тог захтева појављује се однос државе према сексуалним мањинама[4].

Циљ овог рада је да се демонстрира теза да је случај односа Србије према ЛГБТ популацији парадигматичан за општији процес европеизације ове земље: формалне обавезе се испуњавају, али без већих напора да се изазову значајније друштвене промене – усвајање правила не достиже „супстантивни ниво", већ остаје на „вербалном" и формално „легалном" (в. Elbasani, 2013, 14). Акције представљене као позитивно усмерене ка ЛГБТ особама су краткотрајне и површне. Оспоравања и опирања државних органа и службеника нема на нивоу званичног дискурса, већ на нивоу праксе (Ejdus & Božović, 2016), тако да формални подухвати остају „празне љуштуре" са мало или без икаквог стварног друштвеног утицаја (Dimitrova, 2010). „Што је слабији положај државе (*statehood*) у земљи, то је већа вероватноћа да ћемо пронаћи несклад између формалних преноса и преовлађујућих неформалних пракси и институција, што као последицу има површну европеизацију" (Elbasani, 2013, 18), уз све веће продубљивање јаза између формалних правила и неформалних пракси (в. Mungiu-Pippidi, 2014, 28).

Овај рад се при анализи отклона од ЛГБТ популације неће бавити „евроскептицима", „противницима идеологије 'хомосексуализма' наметнуте са Запада", нити другим традиционалистичким, националистичким или клерикалним борцима против равноправног третмана нехетеросексуалаца у Србији. Биће разматране ненамераване и амбивалентне, чак негативне, последице које има прихватање императива ЕУ[5] само привидно (а не суштински), уз покушај идентификовања корективних стратегија које би водиле ка равноправном статуса ЛГБТ особа, и то управо према европским критеријумима.

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[3] Овај критеријум дефинисао је Европски савет у Копенхагену 1993. године и он се редовно наводи као први, пре економског (функционисање тржишне привреде) и административног (постојање институционалних капацитета за примену одредби правне тековине ЕУ – *acquis communautaire*).

[4] „Европска комисија је у писаној напомени навела да је поштовање права хомосексуалаца правни критеријум за приступање ЕУ. Навела је тзв. Копенхагенске критеријуме о подобности за придруживање из 1993. године и члан 2 *Споразума о функционисању ЕУ*, којим се забрањује дискриминација 'мањина'. Такође је навела чланове 10 и 19 *Споразума о функционисању ЕУ* и члан 21 *Повеље Европске уније о основним правима*, који изричито забрањују дискриминацију на основу 'сексуалне оријентације'. 'Права ЛГБТ особа (лезбијки, гејева, бисексуалних и трансродних особа) чине саставни део и Копенхагенских политичких критеријума за приступање и правног оквира ЕУ у борби против дискриминације. Европска комисија пажљиво надгледа њихово спровођење и годишње извештава о напретку земаља кандидата у вези са ситуацијом ЛГБТ заједнице'" (Rettman, 2012; видети и: Ayoub, 2016, 9).

[5] „Земље кандидати немају гласа током стварања правила која регулишу њихов напредак у процесу придруживања" (Elbasani, 2013, 8).

ФОРМАЛНЕ ПРОМЕНЕ У ОДНОСУ ПРЕМА ЛГБТ ПОПУЛАЦИЈИ

Србија је декриминализовала хомосексуалност 1994. године брисањем члана 110 из тадашњег *Кривичног закона*, а касније је донела низ закона који садрже изричиту забрану дискриминације на основу сексуалне оријентације.

Најпре, *Закон о радиодифузији* из 2002, у коме се санкционише ширење информација које подстичу дискриминацију, мржњу и насиље, између осталог и на основу сексуалне оријентације. Ова одредба је касније унета у *Закон о јавном информисању и медијима* који је донет 2014. године.

Закон о високом образовању и *Закон о раду*, донети 2005, такође изричито помињу сексуалну оријентацију у контексту забране дискриминације, што је случај и са *Законом о младима* и *Законом о социјалној заштити* из 2011, *Законом о електронским медијима* из 2014. и *Законом о оглашавању* из 2016. године (с тим што се у последњем наводи „сексуално опредељење" уместо „оријентације"[6]).

Усвајању *Закона о забрани дискриминације* 2009. године претходио је низ покушаја његове измене или потпуног стопирања, управо због одредаба које се односе на сексуалну оријентацију и родни идентитет – део члана 21 из предлога закона, који се односи на родни идентитет, уклоњен је (в. Jovanović, 2013, 89-91). Између осталог, овим Законом установљена је функција Повереника за заштиту равноправности као самосталног државног органа[7].

Закон о здравственом осигурању, донет 2011. године, предвиђа да држава сноси најмање 65% од цене здравствене услуге из средстава обавезног здравственог осигурања код операција промене пола из медицинских разлога (члан 45). *Закон о полицији* из 2016. године забрањује дискриминацију на основу пола, рода и родног идентитета, што представља „напредак у односу и поступању државних органа према трансродним и трансполним особама као вишеструко осетљивој категорији становништва изложеној честим кршењем њихових права" (Јовановић, 2017, 11). У Закону се експлицитно не помиње забрана дискриминације на основу сексуалне оријентације, с тим што у члану 27 стоји да полиција развија „професионалне капацитете и компетенције и етику полицијских службеника за друштве-

[6] Осећање сексуалне привлачности није ствар слободног нахођења, избора или рационално донете одлуке, те је због тога уместо „сексуалног *опредељења*" исправније користити синтагму „сексуална *оријентација*".

[7] Сви случајеви дискриминације на основу сексуалне оријентације који су пријављени овом органу, заједно са мишљењем и препорукама, могу се наћи на вебстраници www.ravnopravnost.gov.rs/rs/сексуална-оријентација.

но одговорно деловање полицијске службе *уз пуно поштовање људских и мањинских права и слобода и заштиту свих рањивих група*", што би имплицитно могло да се односи на ЛГБТ особе. Такође, у члану 33 *Закона*, као утврђени и достигнути стандард полицијског поступања наводи се „остваривање људских и мањинских права и слобода", те „недискриминациј[а] при извршавању полицијских задатака".

Са изменама *Кривичног законика* 2012. године, уведена је одредба (54а) којом се сексуална оријентација и родни идентитет наводе као отежавајуће околности за одмеравање казне за „злочин из мржње"[8].

Када је у питању однос према нехетеросексуалцима, држава Србија је на пољу јавних политика била видно активна. Јуна 2013. године Влада је усвојила *Стратегију превенције и заштите од дискриминације*, а оквир за спровођење стратешких циљева прецизиран је кроз *Акциони план за примену Стратегије превенције и заштите од дискриминације за период од 2014. до 2018. године*[9]. Основни циљ *Стратегије* је поштовање уставног начела забране дискриминације осетљивих друштвених група, међу којима су препознате и ЛГБТ особе, на које се односе Општи циљеви, који се првенствено, али не искључиво, тичу формалне (законске) сфере:

> Усклађивање правног оквира са међународним стандардима. Спречавање кршења забране дискриминације према ЛГБТ особама, кроз уставне, законодавне, регулаторне реформе као и доношење стратешких докумената. Укидање или смањење дискриминаторских пракси према ЛГБТ особама у различитим областима. Обезбеђење услова за спровођења Закона о забрани дискриминације у делу који се односи на дискриминацију ЛГБТ особа. Промена јавних политика у одређеним областима које могу да буду извор дискриминације ЛГБТ особа. Институционална заштита ЛГБТ особа од јавног и приватног насиља, нарочито у области рада и запошљавања, здравственог и социјалног система, личног и породичног живота, образовања, спорта и др. Промена традиционалног, негативног стереотипа о ЛГБТ особама. Спречавање и кажњавање говора мржње и физичких напада на ЛГБТ особе. Унапређивање статуса и положаја ЛГБТ особа. (Одељак 4.4.3. *Стратегије*).[10]

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[8] Шире о нормативном оквиру у Србији у области ЛГБТ права видети: Јовановић, 2017.

[9] Оба документа су доступна на сајту Канцеларије за људска и мањинска права Владе Србије: http://www.ljudskaprava.gov.rs/sr/node/145 (последња посета: 8. 3. 2018).

[10] *Стратегија* предвиђа и мере за остваривање Општих циљева (Одељак 4.4.4), а Одељци 4.4.5.1 – 4.4.5.7. садрже Посебне циљеве из седам области: 1) Слобода мирног окупљања, слобода изражавања и политичка и друштвена партиципаци-

Министарство унутрашњих послова је фебруара 2014. године донело *Акциони план за унапређење рада и сарадње полиције са ЛГБТ популацијом*, који предвиђа борбу против хулиганизма и екстремизма, опредељивање официра за везу и реализацију пројеката са циљем поштовања различитости.

Уз подршку Владе Србије и Савета Европе, спроведен је програм *Унапређење система социјалне заштите за ЛГБТ особе и њихове породице*[11], а Влада је финансирала и пројекат *Стварање толеранције и разумевања према ЛГБТ популацији у српском друштву*[12].

Јуна 2017. године, Ана Брнабић, која је истополно сексуално оријентисана, именована је за премијерку. Ово је свакако чин који је повећао видљивост лезбијске популације у Србији. Посебно је занимљиво да је Брнабић подршку добила и од представника Српске православне цркве[13], која иначе има неблагонаклон став према „промоцији хомосексуализма" (в. Jovanović, 2013).

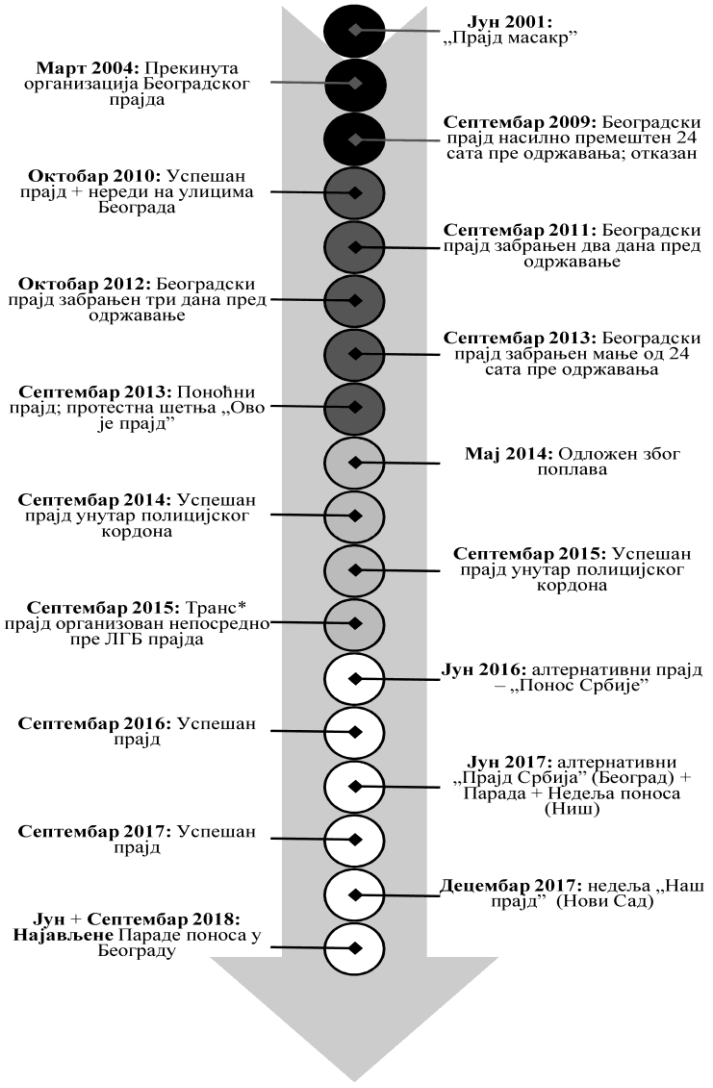
Поред свега наведеног, у Србији је „успешно" одржано и више *Парада поноса* (в. *Графикон 1*), и то не само у Београду већ и у Нишу и Новом Саду. Престоница већ две године заредом има две *Параде* (јунску и септембарску). Ова дешавања, као и пратеће јавне дебате и оспоравања, добили су велики медијски публицитет и недвосмислено допринели већој видљивости ЛГБТ популације, што, према Филипу Ајубу (Ayoub, 2016), као крајњи ефекат има побољшање њеног положаја.

ја ЛГБТ особа, 2) приватни и породични живот, 3) рад и запошљавање, 4) образовање, 5) здравље и здравствена заштита, 6) социјална заштита, и 7) спорт, становање и укрштена дискриминација (в. Јовановић, 2017, 35–37).

[11] Више о пројекту: http://www.asocijacijaduga.org.rs/wp-content/uploads/2016/08/brosura-text-grafosel.pdf (последња посета: 8. 3. 2018).

[12] Више о програму: http://www.ljudskaprava.gov.rs/sh/node/19809 (последња посета: 8. 3. 2018).

[13] „Ана Брнабић добила је пуну подршку врха СПЦ за премијерску функцију (…) епископ загребачко-љубљански Порфирије (Перић), који је у Скупштину Србије дошао заједно са патријархом српским Иринејом, пришао је министраки Брнабић чим ју је угледао у маси, љубазно се поздравио са њом, а онда јој пренео поруку СПЦ. Владика Порфирије, који је сада и члан Синода СПЦ (…), пришао је министарки, ухватио је за обе руке и дословно јој рекао: 'Ево и уживо да вам кажем, имате моју и пуну подршку Цркве да будете премијер, о вама мислимо све најбоље. Нико се томе не противи, заиста. Молим вас, немојте да верујете свакојаким гласинама'" (http://www.alo.rs/otkrivamo-spc-zelimo-da-ana-nasledi-vucica/109503, последња посета: 15. 3. 2018).



Графикон 1: Историјски преглед Прајда (Парада поноса) у Србији између 2001. и 2018. године[14]

Фаза 1 ● Парада: од насиља до забране
Фаза 2 ● Од „државног прајда" до претње по јавну безбедност
Фаза 3 ● Парада као хомонационалистички потез
Фаза 4 ○ Парада без инцидената, алтернативни прајд и параде/недеље поноса ван Београда

[14] Графикон представља модификацију *Figure 1* (Slootmaeckers, 2017a, 521). Додати су подаци за период 2016–2018. и *Фаза 4*.

Горенаведене мере и догађаји имали су извесног утицаја на промену става грађана Србије према хомосексуалцима, но он је и даље код преовлађујућег дела становништва остао обележен нетрпељивошћу и осудом[15].

О помаку према прихватању нехетеросексуалаца у Србији сведоче и подаци из истраживања спроведеног 2017. године у оквиру пројекта *Closing the Gap Between Formal and Informal Institutions in the Balkans* (INFORM)[16]. Када се одговори на питање о „оправданости хомосексуалности" упореде са подацима из *Европског истраживања вредности* (*European Values Study* – EVS)[17] из 2008. и *Анкете о вредностима у свету* (*World Values Survey*)[18] из 2001. године, може се уочити повећање заступљености позитивног става међу становницима Србије из 2017.

Табела 1. „Молим вас, реците ми да ли су, према Вашем мишљењу, следећи облици понашања увек оправдани, никад нису оправдани или нешто између – хомосексуалност."
(скала 1–10; 1 = никад, 10 = увек)

	Хомосексуалност **оправдана** (одговори 6–10)	Хомосексуалност **неоправдана** (одговори 1–5)	*mean / std. dev.*
WVS **2001**	**5,4**%	**86,8**%	1,96 / 1,98
EVS **2008**	**5**,**96**%	**94**%	1,82 / 1,90
INFORM **2017**	**13**,**2**%	**79**,**4**%	2,74 / 2,58

Узевши у обзир промене у сфери законских норми[19], усвојене државне стратегије, чињеницу да је лезбијка на месту премијера и *Параде* одржане без инцидената, не може се рећи да је у Србији

[15] Више о доминантном ставу према хомосексуалцима у Србији видети: Јовановић, 2016, 55–72; 84–86.

[16] Истраживање је реализовано на репрезентативном узорку 1127 грађанки и грађана Србије старијих од 18 година. Прикупљање података обављено је у периоду мај–јун 2017. године.

[17] База са подацима доступна је на сајту: http://www.europeanvaluesstudy.eu/page/survey-2008.html. Информације о узорку (1512 испитаника и испитаница) и прикупљању података у Србији доступни су на страници: https://info1.gesis.org/EVS/Studies/.

[18] Подаци (за 1200 испитаника и испитаница из Србије) доступни су за *онлајн* анализу на сајту: http://www.worldvaluessurvey.org.

[19] Антидискриминационо законодавство не представља стандард у ЕУ, тако да има „напреднијих" земаља (нпр. Пољска), које још увек немају законе који постоје у Србији (примедба уредника у: Blagojević, 2011, 28, n2).

постигнуто мало.[20] Према речима дугогодишњег активисте који коментарише садашњу ситуацију у односу на ону из времена СФРЈ:

> Успели смо да ставимо (ЛГБТ) питање на сто и на јавном и на политичком нивоу; то је сада опште место (mainstream). Не бих рекао да је популарно или претерано позитивно, али бар је ту. Сада нико не може да игнорише ово питање, што је за мене израз највеће хомофобије (Swimelar, 2017, 931-2; из интервјуа вођеног новембра 2014. у Београду).

Ипак, све од горенаведених мера имају и проблематичну страну – како у смислу њиховог утицаја на свакодневни живот нехетеросексуалних и родно неконвенционалних људи тако и на карактер и последице ЛГБТ афирмативног политичког деловања у Србији. У наредном одељку се окрећемо овим проблематичним последицама.

НЕНАМЕРАВАНИ И АМБИВАЛЕНТНИ ЕФЕКТИ

Као што је хомосексуалност у Србији 1994. декриминализована „одозго", као део једне од рутинских правних реформи, без претходних иницијатива самих грађана и јавне расправе, тако су и горенаведени закони такође стигли „одозго", овога пута као производ притисака Европске уније (Kahlina, 2015, 77-78), кроз „педагогију условљавања" (*levered pedagogy*; Kulpa, 2014) – хегемонски дидактички однос где се Централна и Источна Европа појављују као предмет Западноевропске „педагогије" и представљају као трајно „посткомунистичке", „у транзицији" („још увек недовољно либералне") и хомофобичне, уз прећутну претпоставку о универзалности западноевропског либералног модела.

Закони су, од стране државе, инструментализовани у процесу европских интеграција, а нису донети као аутентични „правни инструмент за заштиту 'мањина'" (Bilić, 2016a, 130) – нису били резултат *grassroots* акција „одоздо"[21]. Уз то, послужили су као још једна од инстанци дистанцирања од Милошевићевог режима[22].

Такође проблематично у вези са нормативно-прескриптивним оквиром јесте питање одговарајуће примене закона у пракси (Зекавица, 2016, 355; в. Mendelski, 2016, 355), те квалитета и усклађености закона и других правних аката (Николић, 2012, 141).

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[20] Институција грађанске истополне заједнице и признавања наследних права истополних партнера и партнерки једно је од питања које чека на регулисање.

[21] Међутим, ово је проблем који се тиче законодавства уопште у Србији, а не само правних аката усмерених на регулисање статуса мањина.

[22] У Хрватској је, слично, процес придруживања делом био дистанцирање од Југославије кроз дискурс „повратка у Европу" (Kahlina, 2015, 78).

Посебно је индикативно да члан Кривичног законика који се односи на злочин из мржње у Србији „још ниједном није примењен ни по једном Законом предвиђеном основу, а не само по основу сексуалне оријентације или родног идентитета" (Зекавица, 2016, 356; видети и: Исаковић и Жолт, 2016, 401 n6, n7). Имплементација *Закона о забрани дискриминације*, осам година након ступања на снагу, остаје минимална (Slootmaeckers, 2017b). Одсуство адекватне примене и неефикасност судства када су у питању напади на ЛГБТ особе стварају јавни простор који одликује „култура некажњивости" (Stakić, 2011, 60; за податке о насиљу видети: Ковачевић, 2018[23]), што може само да подстакне насилно понашање, уместо да га спречи.

„Преношење" формалних правила ЕУ не мора нужно да прати стварно „довођење у ред" одређене области. Има аутора које посебно забрињава империјалистичка пракса ЕУ, која се делом спроводи кроз формално-легалистички дискурс људских права, уз занемаривање локалног социјалног контекста:

> [З]акон – без значајних промена у српском друштву и политичкој култури – заправо не чини ништа друго осим што ојачава инфантилно провинцијално стање духа, које је опет (кроз саму „стратегију инклузије") искључиво не само у односу на маргинализоване појединце и групе, већ и у односу на тражење алтернатива и политичких могућности (Blagojević, 2011, 38; видети и: Ammaturo, 2017).

Правни акти којима се штите људска права, без постојања развијене демократске културе и политичког плурализма, који подразумева довољно снажне политичке опције које би биле супротстављене доминантном неолибералном дискурсу, остају не више од „слова на папиру".

Некритички преносећи Западно искуство[24] (означено као „напредно" и „модерно"), као главни проблем поставља се питање права на јавно окупљање и изражавање, што одржавање *Парада поноса* претвара у мерило („лакмус тест" – Slootmaeckers, 2017a) степена европеизованости „заостале" и „хомофобичне" земље. Опис *Параде* одржане 2010. године сведочи о наведеном:

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[23] Требало би напоменути да је било јавних реакција на овде наведен извештај о насиљу над ЛГБТ особама, где се он критикује и износе тврдње о знатно већој распрострањености насиља над нехетеросексуалном и родно неконвенционалном популацијом (видети: http://rs.n1info.com/Vesti/a390244/Centar-Vise-nasiljanad-LGBT-osobama-nego-u-izvestaju.html; последња посета: 29. 11. 2018).

[24] При чему не треба заборавити да „Србија није имала ни приближно сличан историјски ток геј-лезбејског активизма оном у САД-у или неким европским земљама" (Маљковић, 2014, 365). Више о друштвеном контексту и историји ЛГБТ активизма у Србији видети: Bilić, 2016b, 206–208.

> Иконографија и језик који су коришћени на самој Паради су били Западни или глобални, што је само долило уље на ватру критици Параде као нечег страног и увезеног. У маси је могла да се види застава ЕУ, заједно са заставама дугиних боја и љубичастом заставом Велике Британије, али не и српска застава. Музика у позадини била је Западни поп. Ако су говорници (углавном странци) помињали Србију, обично је то било у негативном контексту, као место где не владају европске норме људских права. Занемарљиви су били покушаји да се призову неке од локалних традиција разноликости и толеранције (Mikuš, 2015, 22).

Будући део дискурса цивилног друштва, *Парада* је преузела глобалну и западну иконографију. Овај грађански дискурс је због тога обележен као „стран", „увезен" и „наметнут". У том контексту је врло занимљива и политички ефикасна интервенција дрег-краљице у српској народној ношњи на септембарском *Прајду* 2018. године у Београду, која изјављује: „Љубав је оно што је традиционална вредност, а не насиље и мржња – то желим да поручим својим аутфитом"[25].

Српска политичка елита, кроз тактичко европеизирање („чин повиновања који ЕУ треба да пренесе спремност на европеизирање кроз усаглашавање са одређеним 'европским нормама'", Slootmaeckers, 2017b), спроводи апропријацију и експлоатацију *Параде* („државни прајд", Mikuš, 2011) тако демонстрирајући своју (наводну) оријентисаност ка Европи, без праве заинтересованости за ЛГБТ питања, што потврђују хомофобне изјаве водећих политичара[26], које су такође и вид додворавања њиховој конзервативној изборној бази.

„Државни прајд" је 2014, кроз милитаризацију[27] (Ejdus & Božović, 2016), претворен у „Параду авети" (*Ghost pride*) – учесници ритуалне шетње кроз полицијски обезбеђену сигурну зону остали су

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[25] http://lolamagazin.com/2018/09/25/sta-ce-zena-sama-u-kafani-sta-ce-dreg-kraljica-sama-u-srpskoj-nosnji/; последња посета: 29. 11. 2018.

[26] На пример, изјава Ивице Дачића из септембра 2012: „Изем ти такву Унију у коју је геј парада улазница" (https://www.blic.rs/vesti/politika/dacic-izem-ti-takvu-uniju-u-koju-je-gej-parada-ulaznica/q7l0bq5; последња посета: 29. 3. 2018), или одговор Александра Вучића на позив да буде на челу *Параде* 2017: „Немам намеру да идем. Нисам неко ко је одушевљен таквом манифестацијом. Без обзира на то, моја обавеза је, и то сам успео да остварим, да се њима гарантује право да чине оно што је део њихове слободе и њихових права и због тога сам задовољан. (…) Не пада ми на памет. И то је моје право да одбијем, да шетам где хоћу и кад хоћу. Хвала на позиву. Нећу." (https://www.blic.rs/vesti/drustvo/organizatori-parade-ponosa-pozvali-vucica-da-stane-na-celo-kolone-vucic-hvala-na/p878b4y; последња посета: 29. 3. 2018).

[27] Занимљиво је да се полиција тада није отворено (формално) противила *Паради* (док полицијски синдикати јесу), већ је посредно (неформално) отежавала њено одржавање кроз низ техничких опструкција (Ejdus & Božović, 2016, 10).

невидљиви за ширу јавност, што је манифестацију лишило политичког садржаја, а тиме и могућих ефеката на друштво (Slootmaeckers, 2017a, 14). Готово да је у питању био „шоу" или „позоришна представа" за домаће и стране медије и изасланике ЕУ о томе колико је политичка елита (која је преузела „заслуге" за одржавање *Параде*[28]) посвећена европском пројекту борбе против дискриманације мањина, што је еклатантан пример формалне европеизације, без бављења суштинским питањима, као што су, на пример, конкретне мере за спречавање насиља које трпе ЛГБТ особе или ефикасно санкционисање говора мржње усмереног ка овој популацији.

Пошто је држава у великој мери присвојила *Параду*, ова је изгубила своју везу са ЛГБТ заједницом,[29] на шта упућују резултати истраживања њених припадника из 2014.[30] на питање „Да ли сте за одржавање Параде поноса у Србији?", најчешће дат одговор (38%) јесте „Да, али не у овом облику каква је данас" (Стојаковић, 2014, 75). Занимљиво је да је у централној Србији, која обухвата сиромашније, национално хомогене и традиционалније крајеве, најчешћи одговор „Не", за који се опредељује 51% испитаника (76) – за њих је повећање видљивости ЛГБТ популације (што је и намера *Параде*) значило повећање насиља над њима у локалном окружењу. На питање шта би требало да буду циљеви ЛГБТ организација, одговор који добија највеће неслагање (32%) јесте управо „Одржавање Параде поноса" (56–57). Организатори *Параде*, на основу података добијених кроз фокусгрупне интервјуе са припадницима ЛГБТ популације, немају легитимитет кад је у питању представљање ЛГБТ заједнице (189).

Постављање лезбијке за премијера, такође, треба читати као део тактичке европеизације – потеза који пре свега треба да Европи покаже „напредност" Србије, а који неће битно (ако уопште) утицати

[28] Видети део горенаведене изјаве Александра Вучића: „… моја обавеза је, и то сам успео да остварим, да се њима гарантује право да чине оно што је део њихове слободе и њихових права и због тога сам задовољан".

[29] Значење синтагме „ЛГБТ заједница" је нејасно. Помињући „заједницу без заједништва", Душан Маљковић пише да се наведена фраза често користи „као синоним за тзв. геј сцену, тј. геј јавност, која се манифестује у активизму, клабингу итд., а коју такође можемо приупитати да ли адекватно адресира акроним ЛГБТ: на пример, где су представници 'Б' популације у организацијама, какви су односи међу самим 'припадницима' – како друге категорије третирају нпр. транссексуалце – и где се та заједница уопште види као политички субјекат који показује некакав релевантан степен јединства?" (Маљковић, 2014, 366, n7).

[30] Пригодни узорак чинило је 402 испитаника (163 жене, 225 мушкараца и 14 који су се по питању родне припадности изјаснили као „други"), коришћен је електронски упитник, а подаци су прикупљени у периоду јануар–април 2014, уз одржавање четири фокус-групе (у Новом Саду, Нишу и две у Београду) (Стојаковић, 2014, 13–15).

на промену живота нехетеросексуалаца или владајућих ставова према њима – „симболички политички чин остаје само то: симболички" (Slootmaeckers, 2017b). Ипак, и као такав није без значаја: Србија је једна од изузетно ретких земаља у којој је случај да је лезбијка на челу врховног органа извршне власти. Нема сумње да ће на дужи рок ова чињеница утицати на побољшање положаја нехетеросексуалаца у Србији, а можда и у земљама региона.

Одсуство истинске намере „хватања у коштац" са проблемима ЛГБТ популације манифестује се и кроз мањкавости уочене у анализи *Акционог плана за спровођење Стратегије превенције и заштите од дискриминације*, које се односе на „недостатак доследних рокова за спровођење, као и неопходних ресурса за реализацију" (Јовановић, 2017, 37). Нереални рокови и нераспоређена буџетска средства за имплементацију *Стратегију* претварају само у списак лепих жеља, која је тако постављена на пут ка сигурном забораву.

ЗАКЉУЧАК: ПРОТИВ ПАТОЛОГИЗАЦИЈЕ ЕВРОПЕИЗАЦИЈЕ

Када Мартин Менделски пише о „патолошкој моћи ЕУ", која подрива успостављање владавине права у земљама југоисточне Европе (Mendelski, 2016), наводи три основна проблема европеизације, од чега су два присутна у пољу политике побољшања положаја ЛГБТ особа:

1) Вредновање квантитета уместо квалитета – логика „што више, то боље", када су у питању законски прописи, води до повећања дискрепанције између формалних правила и неформалних пракси (358); инсистирање на квантитету исхода, без увида у квалитет процеса који до њих доводе – чини цео подухват неефикасним и мањкавим.

2) Пристрасно оснаживање домаћих актера промене – демократске реформе се поверавају контроверзним политичарима, који их користе за учвршћивање своје ауторитарне власти и недемократско обрачунавање са политичким противницима (359), што крајње кориснике реформи оставља ускраћенима за њихове ефекте. Из овога не би требало извући закључак да друштвене реформе које се тичу побољшања статуса ЛГБТ особа не треба спроводити „одозго", већ да оне, да би биле ефикасне, морају да буду део ширих друштвено-политичких промена које би за циљ имале управо борбу против ауторитарне власти, демократизовање друштвеног живота и лустрацију „контроверзних" политичара.

Без осветљавања и проблематизовања свакодневних животних недаћа са којима су суочени припадници ЛГБТ популације у Србији, које у главној мери карактерише присилна ћутња, искљученост и страх да се не буде откривен и подвргнут горем третману и/или насиљу (Јарић, 2011), не може да буде ни побољшања њиховог положаја.

Највећи део акција које су експлицитно усмерене на еманципацију и правичан третман нехетеросексуалаца, а као своје (ненамераване) последице имају маскирање њиховог стварног статуса – своде се на спектакл и празна обећања.

Стратегије ЕУ које би „олово дискриминације требало да алхемијски претвор[е] у злато толеранције" (Маљковић, 2014, 366) нису довољне, јер циљ није само толеранција. Да ЛГБТ особе не би биле „монета за поткусуривање у политичким једначинама", технике активиста, који би да избегну искоришћавање од стране државних структура, треба да се

> редефинишу тако да се ослаби или пресече појмовна веза између хомосексуалности/нехетеросексуалности и Европе и сексуална разноликост утемељи у локалним друштвено-политичким праксама и историјским контекстима (Брковић, према: Bilić & Stubbs, 2016, 240).

Платформа за активистичке праксе у овом правцу не би смела да се сведе на „формалистичку и одвећ прагматичну" „мантру" људских права (Bilić, 2016a, 145). Захтевала би узимање у обзир ширих неравнотежа моћи и трендова у сфери политике (Bilić & Stubbs, 2016, 244), уз уважавање интерсекцијске природе угњетавања (Bilić, 2016a, 145) и стварање наратива који „одговара" домаћим нормама и традицији кроз уоквиравање страних правила у препознатљиве локалне дискурсе[31] (Ayoub, 2016, 34), што би поспешило изградњу локалних иницијатива и (само)оснаживање „заједнице", што је од велике важности за ЛГБТ популацију, посебно ону ван Београда и других урбаних центара.

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[31] Некадашње постојање „заклетих девица" – „вирџина" (жена које су постајале „мушкарци") у јужној Србији или предање о „голом Рељи", које се око Ускрса оживљава у Бујановцу (http://www.politika.rs/scc/clanak/24469/Голи-Реља-бујановачки-бренд; последња посета: 29. 11. 2018), могли би да буду искоришћени као основа за „превођење" глобалних норми у локални контекст.

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LGBT PERSONS IN SERBIA: BETWEEN FORMAL ACCEPTANCE AND INFORMAL REJECTION

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Summary

Generally speaking, Europeanization is defined as "a process in which states adopt EU rules". As Serbia is getting closer to the EU, this process is gaining on its momentum, but running far from smoothly. Formal endeavors aimed at the change of the social status of the LGBT persons in Serbia are a case in point, as they are linked to the idea of Europeanization. In accordance with the EU conditions – as a political precondition for joining the Union, it is stated that the candidate country must have "stable institutions which guarantee democracy, the rule of law, and respect and protection of minority rights," and one of the segments of this requirement that emerges is the relation of the state towards sexual minorities – a series of measures have been taken with the aim of improving the social position of LGBT persons: a series of laws were passed which contained provisions focused on fighting discrimination against non-heterosexual persons, programs were realized and action plans made with the same goal in mind, and also several Pride Parades took place without major incidents (as Belgrade

was “besieged” by heavy police forces), with LGBT affirming events taking place in other cities (Novi Sad, Niš) besides the capital. All of the mentioned measures and events had an impact on the changes in the attitudes of the citizens of Serbia towards homosexuals, but these attitudes still remain predominantly marked by intolerance and judgment

The hypothesis of the paper is that in the case of the stand that Serbia takes in relation to the LGBT population there is something that reveals the paradigm for the more general process of Europeanization of this country: the formal obligations are being fulfilled, but no major effort is being invested in bringing about more significant social changes – the adopting rules which do not reach a “substantial level” (Elbasani). Activities represented as positively oriented towards LGBT persons are short-term and superficial. The challenges and resistance of the government bodies and officials are not to be found on the level of official discourse, but instead on the level of practice, so the formal endeavors remain “empty shells” with little or no actual social influence at all, as the high state officials publicly manifest their reluctance toward non-heterosexuals, the police practices indirect resistance toward organizing the Pride, the appropriate application of the laws in practice is lacking, and the absence of any adequate application, and the ineffectiveness of the judiciary when it comes to attacks on LGBT persons creates a public space which is characterized by a culture of impunity.

The Serbian political elite, through “tactical Europeanization“ – “an act of compliance to communicate to the EU a readiness to Europeanize by aligning oneself with certain ‘European norms’” (Slootmaeckers), carries out the appropriation and exploitation of the Parade (“State Pride”, Mikuš) and thus demonstrates its (alleged) orientation towards Europe, without any real interest in LGBT issues, which is confirmed by the homophobic statements made by leading politicians, which are also a form of cow-towing to their conservative electoral base.

All of the activities which explicitly focus on the emancipation and proper treatment of non-heterosexuals, have as their (non-intended) consequences the masking of their actual status, and are reduced to spectacles and empty promises. The strategies of the EU which are supposed to turn discrimination into tolerance and acceptance are not enough. Attempts to implement EU rules and regulations seem to be of no avail if local adaptation, interpretation and appropriation of these norms and the resistance which they spawn, is not taken into account.

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РАЗБОЈНИШТВО У ЈАШУЊСКОМ МАНАСТИРУ 1782. ГОДИНЕ

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Апстракт

На основу изузетно ретког османског документа из готово недоступног Архива Јерусалимске патријаршије, анализирани су подаци о разбојничком чину и смртном рањавању монаха у Јашуњском манастиру 1782. године. По свој прилици, документ се ту обрео као део заоставштине јашуњског монаха Гаврила, који је кренуо на хаџилук и преминуо у Јерусалиму. Указано је на правну процедуру и однос османских власти према манастирима у случајевима разбојничких провала. Потврђују се ставови о порасту криминала у осиромашеним османским европским провинцијама током друге половине 18. века.

Кључне речи: Јашуњски манастир, разбојништво, 1782. година, лесковачки кадијски суд, Османско царство.

AN ACT OF BANDITRY AGAINST THE JAŠUNJA MONASTERY IN 1782

Abstract

The Ottoman archival material kept in the practically inaccessible Archive of the Jerusalem Patriarchate includes a very important document which testifies to an act of banditry against the "Jašunja monastery" in 1782. The outcome was one lethally wounded monk. The most reasonable explanation for the document ending up in the Archive of the Patriarchate of Jerusalem is that it was found among the effects of monk Gavril who had obviously set out on a pilgrimage, but then died in Jerusalem. The analysis of the document is instructive of the legal procedure followed by the Ottoman authorities and their conduct towards the monasteries in the case of robberies. The document also substantiates the view that the Ottoman Empire's impoverished European provinces saw an increasing crime rate in the second half of the 18th century.

Key words: Monastery of Jašunja, banditry, 1782, Leskovac kadı court, Ottoman Empire.

УВОД

Вишевековни значај јашуњских манастира Светог Јована Претече и Ваведења Свете Богородице за духовни живот лесковачког краја је неспоран. Ипак, о њима се сразмерно веома мало зна.[1] Предмет истраживања у овом раду јесте један изузетно редак и драгоцен османски документ из 1782. године. Документ пружа необично занимљиве податке о Манастиру Светог Јована Претече и о његовим монасима, као и о правној процедури османских власти у случајевима разбојничких упада у манастире. Нови подаци умногоме ће обогатити наша сазнања како о самој светињи тако и о безвлашћу у Лесковачком кадилуку током друге половине 18. века.

Оба манастира подигнута су у време када су ти крајеви увелико били у Османском царству, први неупоредиво познатији – 1516/17, а други 1499. године. Кренувши трагом Мирјане Ћоровић-Љубинковић, академик Гојко Суботић разрешио је многе недоумице из историје Манастира Светог Јована Претече. Пажљиво је прикупио све познате историјске податке, коначно разрешио нејасне натписе и у новом хронолошком контексту анализирао архитектуру и живопис (Ћоровић-Љубинковић, 1950, стр. 229–236; Суботић, 1987, стр. 23–36; Суботић, 1988–1989, стр. 77–92; Суботић, 1991, стр. 17–30).[2]

ДРУШТВЕНО-ИСТОРИЈСКИ КОНТЕКСТ И АНАЛИЗА ДОКУМЕНТА

Друштвене и економске прилике у Лесковачкој нахији, којој је припадало Јашуње, обрађене су на основу података из османских царских пописа из 16. века. Много више података у вези са историјом шире околине манастирâ сачувано је за 18. век. Они су омогућили да се упознамо с турбулентним приликама у Лесковачком кадилуку у доба велике институционалне и економске кризе Османског царства, поготово са читлучењем и све већом самовољом локалних моћника (Зиројевић, 1969, стр. 165–170; Зиројевић, 1983, стр. 211–268; Васић, 1966–1967, стр. 41–60; Васић, 1972, стр. 49–72; Тричковић, 1971, стр. 5–23).

Изузетно су ретки изворни подаци о јашуњским манастирима пре 19. века. Пронађено је свега неколико података у османским по-

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[1] Рад је у скраћеном облику претходно био прочитан на научном скупу *Јужни српски крајеви у XIX и XX веку: друштвено-економски и политички аспект*, Врање, 8–9. 12. 2017.

[2] Досадашња сазнања сумирана су у монографији: *Јашуњски манастир Светог Јована Претече: пет векова / Jašunja's Monastery of Saint John the Forerunner Baptist: Five Centuries* (Пејић, Ниношевић и Трајковић, 2017).

писним дефтерима из 16. века (Зиројевић, 1984, стр. 111). Зато је сваки новопронађени документ изузетно драгоцен. Међу османском грађом, иначе недоступног Архива Јерусалимске православне патријаршије, чува се један веома значајан документ који сведочи о разбојништву извршеном у, како стоји, „Јашуњском манастиру" (Ἀρχεῖου του Πατριαρχείου Ἱεροσολύμων, VII, Γ 16/15).[3] Готово сасвим извесно је у питању био Манастир Светог Јована Претече, који се налазио у синору села Јашуња и којег је околни народ у 19. веку управо тако и звао (Веселиновић, 1910, стр. 338–357; Зиројевић, 1984, стр. 111). Хуџет лесковачког наиба, кадијиног заступника и помоћника, иначе најранији до сада пронађени акт лесковачког кадијског суда, веома је интересантне садржине, са врло сликовитим описом догађаја.[4]

Монах Гаврил из „Јашуњског манастира" појавио се у уторак 22. фебруара 1782. године (5. марта по новом календару) у судници лесковачког кадије пред наибом Сејидом Мехмедом и пожалио се на зулум. У лесковачку судницу дошао је јер су јашуњски манастири административно и судски припадали Лесковачком кадилуку. Монах Гаврил је од наиба затражио да истражи и расветли разбојнички напад на монахе и смртно рањавање сабрата Јована. У изјави је прецизно одредио време препада, а потом га је детаљно описао. Претходно вече, како Гаврил рече, „у два сата [од почетка] вечери дана уторка", док су монаси мирно боравили у свом конаку (употребљена је реч *ḫān*), разбојници (*eşḳiyā*) бешлија хаџи Мустафа и Ахмед Ћорбекироглу, уз помоћ четворице-петорице напасника, изненада су провалили у манастир. Том приликом су монаха Јована снажно ударили сечивом „распоривши га по десној страни, од рамена до струка". Смртно рањеног сабрата монаси су потом положили у кола. На Гаврилов захтев, у име суда је у манастир послат други наиб по имену Вели. После увиђаја, када се вратио, посведочио је да су Гаврилови наводи тачни. Правни поступак је уписан у кадијину књигу протокола (*сиџил*) и на основу тога је лесковачки наиб Сејид Мехмед издао хуџет монаху Гаврилу.

Приликом првог рашчитавања документа, двоумио сам се око датума: да ли је у питању 1762. или 1782. година. Седма и девета деценија у хиџранској години често се пишу готово истоветно. На читање године 1762, тј. 1176. по хиџри (*sene sitt ve seb'īn ve mi'e ve elf*), сугерише једна тачкица испод речи која означава деценију, а која би могла да буде саставни део арабичког слова *ba*. Овде је од помоћи

[3] У попису Архива Јерусалимске патријаршије дат је само кратак наслов документа, преписан с полеђине. Наслов не указује на Јашуњски манастир и Лесковачки кадилук. Штавише, наслов сугерише да је у питању напад на монахе са Свете земље. Притом, наведена је 1762. година (Τσελίκας, 1992, p. 539).

[4] Хуџет (*ḥüccet*) јесте акт кадије, његова одлука, пресуда, потврда (Фотић, 1999).

чињеница да је дат тачан датум издавања хуџета (20. реби ул-евел). Ако се определимо за 1762. годину, то би значило да се злочин догодио четири дана раније, јер када се датум прерачуна, добија се субота 28. септембар (9. октобар) 1762. године. Проблем је решен на основу ретко детаљне, па самим тим и драгоцене, изјаве монаха Гаврила, дате на начин какав се не среће често у документима. Он је недвосмислено изјавио да су разбојници упали „вече пре датума ове књиге", тј. у понедељак. Када се година прочита другачије, као 1196. година по хиџри (*sene sitt ve tis'īn ve mi'e ve elf*), онда нам се решење питања датирања јасно указује. Датум 20. реби ул-евел 1196. године по хиџри јесте уторак 22. фебруар (5. март) 1782. године, потпуно у складу с Гавриловом изјавом.

Ето како једна тачкица, за коју на основу снимка не можемо да утврдимо да ли води порекло од писарског пера или се ту нашла неким другим, природним путем, може да унесе читаву збрку и учини документ две деценије старијим. С методолошке стране, ово нас опомиње колико је лако погрешити и колико опрезни морамо бити при тумачењу једног издвојеног документа, ван контекста, документа који говори о догађајима који се не могу потврдити другом грађом.

Када су разбојници провалили у манастир? Монах Гаврил се на кадијском суду врло прецизно изјаснио о времену рањавања: „Вече пре датума ове књиге, у два сата [од почетка] вечери дана уторка". Ту је сада потребно да се мало више задржимо на објашњењу исламског рачунања времена почетка и краја дана, рачунања које је настало на претходним традицијама Блиског истока, код Јевреја, а потом усвојено и у Византијском царству. У Османском царству дан је био подељен на две целине од по дванаест сати. Према ханефитској школи шеријата, на којој су се заснивала званична тумачења шеријата у Османском царству, дан је започињао вечерњом молитвом, акшам-намазом, најављеним од стране мујезина. На овим географским просторима вечерња молитва најављивана је углавном негде између 18 и 20 часова предвече, у зависности од годишњег доба. Требало би да акшам-намаз започне у време нестанка сунца с хоризонта, а да се заврши када на небу не буде беле видљиве светлости, тј. кад падне мрак (Blois, 1999; Hitzel, 2012, pp. 11–37; Wishnitzer, 2015). У мањим насељима време отпочињања дана највероватније је одређивао хоџа или мујезин, ако није постојао мувекит (особа задужена да брине о сатници молитава, присутна у свим већим џамијама) (Aydüz, 2006; Wishnitzer, 2015, pp. 25–32). У Истанбулу је постојао мунеџим-баши, главни астроном (у исто време и астролог), задужен за израђивање годишњег календара, особа на основу чијих су смерница стотине мувекита одређивале прецизно време одржавања свих пет дневних молитава у Истанбулу. И када су у 19. веку уведени механички сатови, традиција се одржала дуже време (Aydüz, 1995, pp.

159–207; Shefer-Mossensohn, 2015, pp. 51–52). У складу с наведеним чињеницама, изјава „у два сата [од почетка] вечери дана уторка", у ствари значи да се злочин догодио у понедељак, нешто пре 20 часова.

Зашто је монах Гаврил дошао код кадије, затражио да се случај истражи и да о томе добије овакав документ који није ништа друго до обично регистровање смртног рањавања? Гаврил не описује шта се још десило, да ли је било пљачке, када су разбојници побегли, нити даје друге детаље. Чин регистровања рањавања са највероватнијим смртним исходом био је неопходан како би се скинула одговорност са самог Гаврила, а можда и других монаха, ако их је било у манастиру. Врло је вероватно да је Гаврил био игуман манастира и да је стога он наступио у име братства. Свако рањавање, а поготово смрт, обавезно су морали да се пријаве властима (Фотић, 2005, стр. 50–51). Овде није у питању спречавање државних службеника да се докопају покојниковог иметка у корист државне благајне (Бејт улмала), на шта су имали право уколико иза покојника није било наследника. Имовина преминулих монаха до укупне суме од 5000 акчи остајала је у манастиру или је ишла у патријаршијску касу. За државну благајну узимало се све преко те суме. То се ретко дешавало јер је тако богатих монаха било изузетно мало. У 18. и 19. веку гранична сума се више и не помиње у бератима патријараха (Фотић, 2000, стр. 84–85; Ζαχαριάδου, 1996, pp. 157–162, 174–187; Kabrda, 1969, pp. 47–48, 84–86). Истрага је била неопходна због утврђивања кривца, како би се у корист државе наплатио десетак од крвнине (одштете). Ако се кривац не би именовао, власти би новац наплатиле од монаха јер се крв пролила унутар манастира (Фотић, 2000, стр. 176; Heyd, 1973, pp. 308–311; Матковски, 1973). Османске власти су у Лесковачком кадилуку током друге половине 18. века неретко учествовале и подстицале убиства како би убрале што веће износе на име крвнине. О томе сведоче жалбе становништва упућиване Порти 1747. и 1757. године, и то на понашање самог санџак-бега. Приход није био мали. Лесковачки мутеселим је 1744. године на име десетка од крвнине узео читаве 2000 грошева! (Тричковић, 1971, стр. 19–20). То је разлог зашто је монах Гаврил затражио да се један наиб одмах упути на лице места да изврши увиђај. Није зато чудно што је Гаврил тај документ толико ценио и што га је понео чак и на хаџилук.

Не знамо како је дошло до сукоба. Могуће је да су напасници хтели да злоупотребе тзв. право на конак и гошћење, иако нису путници (Фотић, 2005, стр. 37). Видимо да су били настањени у околини и да су међу сведоцима овог правног чина (*şühūd ül-ḥāl*) на кадиј-

ском суду наведени један бег и један спахија.[5] Сасвим је могуће да су злочинци припадали неком од локалних војних родова присутних и у мањим утврђењима (један је назван бешлијом). Кадија није могао да суди припадницима војног сталежа (сталежа аскера) – за њих су биле надлежне војне судије, али је имао право да изврши истрагу и да о томе сачини документ (Imber, 2002, pp. 245–251; Jennings, 1978, pp. 161–164). Без обзира на то да ли су у питању војна лица или обични разбојници, на санџак-беговим људима је било да их гоне и затварају. О безбедности унутар једног санџака бринули су војвода и субаша (Heyd, 1973, pp. 254–275; Jennings, 1978, pp. 148–150, 165–169; İlgürel, 1981, pp. 1275–1281).

Један интересантан детаљ такође вреди поменути. Бег који је присуствовао и сведочио утврђивању чињеничног стања звао се Хумбараџи Али-бег. Нема никакве сумње да је Хумбараџи Али-бег био изданак истакнуте породице локалних ајана (првака, локалних достојанственика) из редова заима и спахија, који су се обогатили формирајући велике чифтлике од одузетих сељачких баштина и поседа како Срба тако и муслимана. У свом драгоценом раду о Лесковачком кадилуку у 18. веку, Р. Тричковић је неколико пута указала на моћног лесковачког ајана, осведоченог насилника Мехмед-бега Хумбараџића, спахију села Биљанице, и његовог сина Хасана, који су били узрок бројних жалби локалног живља од 1744. до 1762. године. Мехмед-бег је постао економски толико јак да је 1757. године откупио црнотравске и власинске самокове са све радницима на њима за преко 1700 грошева. Прерада гвоздене руде била је један од најозбиљнијих привредних подухвата у том крају. Држава је рудна места давала у закуп тражећи петину производа (Тричковић, 1971, стр. 16–18, 21). Појава Хумбараџи Али-бега 1782. године међу сведоцима судског документа о злочину у Јашуњу говори о томе да се породица успешно одржала на водећим позицијама бар још две деценије.

Нажалост, не знамо ништа више о судбини монаха Гаврила. Нема сумње да се упутио на дуги и опасни пут да се поклони Светом гробу и другим хришћанским светињама. Свакако је стигао у Јерусалим, где је највероватније и преминуо, по свему судећи у неком православном манастиру. Његова заоставштина извесно није могла бити велика. За сада не знамо да ли је, поред приказаног хуџета у Архиву Јерусалимске патријаршије, сачуван још неки документ из његове личне заоставштине. Архив је пребогат арапским и османским документима који говоре о присуству српске православне заједнице на Светој земљи, нарочито о манастирима којима су једно време управ-

[5] О институцији „сведоци чина" в. рад „Хришћани као сведоци чина (*şuhud ul-hal*) на кадијским судовима у Османском царству" (Крешић, 2014, стр. 23–34).

љали Срби. То су Мар Михаил, Манастир арханђела Михаила, у непосредној близини Цркве Васкрсења Христовог, и Мар Саба, чувена Велика лавра Светог Саве Освећеног у Јудејској пустињи. Има докумената и о ходочасницима. За српску историју би такође биле веома значајне бројне књиге пописа поклоника, њихових дарова и закупа келија у којима су боравили, а које се односе на другу половину 19. века и почетак 20. века (Недомачки, 2004, стр. 45–71; Τσελίκας, 1992; Fotić, 2012).

После Београдског мировног споразума потписаног 1739. године, подручје Лесковачког кадилука преплављено је отпуштеним војницима, махом Арбанасима, и придошлицама из арнаутских крајева, који су се силом насељавали на запустелој земљи. У којој је мери завладало хаотично стање, безвлашће, пљачке и зулуми различите врсте – понајбоље илуструје чињеница да су одметници могли формирати такву војску која је опседала чак и сâм Лесковац 1741. године. Домаћи муслимани из Ниша, Прокупља и Лесковца деценијама су се жалили Порти на зулуме дошљака. Жалбе раје биле су неупоредиво бројније. Из Истанбула су редовно стизали фермани којим су се наређивале истраге, кажњавања и протеривање силника и разбојника. Међутим, они се нису обазирали на законе, подсмевајући се султанској вољи. Нису се либили да нападну пиротског митрополита док је убирао државни данак 1777. године у селу Кутини, опљачкају га и сасеку његову пратњу, делом састављену и од муслиманских јасакчија. Пораст криминала, међусобни сукоби припадника различитих војних редова, те спахија и читлук-сахибија, као и само читлучење, довели су рају до саме границе издржљивости (Тричковић, 1971, стр. 12–20).

ЗАКЉУЧНА РАЗМАТРАЊА

Одјеци ове суморне, безнадне и крваве свакодневице очитују се и у овом ретком хуџету лесковачког наиба из 1782. године, сведочанству о препаду и смртном рањавању једног монаха Јашуњског манастира. Документ нам је омогућио да разумемо пуну правну процедуру у којој је активно учествовао монах Гаврил, по свему судећи, игуман манастира. Значај документа потврђује и чињеница да га је Гаврил понео на далеки пут у Свету земљу, где је највероватније и окончао свој живот. С друге стране, бачено је нешто више светла и на сâм Јашуњски манастир, толико ретко помињан у историјским изворима. Зато овај документ вреди објавити у целини и с научном транскрипцијом – тим пре што је то једини познати акт лесковачког шеријатског суда из периода пре 19. века.

ПРИЛОГ

Хуџет
(᾽Αρχεῖου του Πατριαρχείου ῾Ιεροσολύμων, VII, Γ 16/15)
Он!
[*Овера*]

Оно што је овде је истражено и записано. Ово написа убоги – нека се увећа Његова слава – Сејид Мехмед, кадија у заступству [наиб] у граду Лесковцу. Нека му је опроштено!
[*Печат*] Сејид Мехмед [...?]

Разлог писању правоваљане књиге је следећи:

Овај узрок документа, житељ Јашуњског манастира који од почетка [административно] припада касаби Лесковац, монах по имену Гаврил пред узвишеним шеријатским скупом који захтева поштовање овако је изјавио и пожалио се на зулум:

„Вече пре датума ове књиге, у два сата [од почетка] вечери дана уторка, док смо ми мирно боравили у свом конаку, становници [топоним неразумљив] разбојници по имену бешлија хаџи Мустафа и Ахмед Ћорбекироглу, са пратиоцима, њих четири-пет разбојника, дошли су и изненада провалили у поменути манастир. Мог сабрата, монаха по имену Јована, снажно су ударили и ранили га сечивом, распоривши га по десној страни, од рамена до струка. Пошто ће вероватно умрети, сада је [положен] у кола. Мој је захтев да [случај] истражите и расветлите и [предате] ми у руке потписани шеријатски хуџет".

Пошто је то изјавио, од стране суда одређен је и послат наиб Вели. После увиђаја и истраге [утврдио] је да је поменути заиста рањен сечивом по десној страни од врха рамена до струка и да му је стомак распорен. Пошто је поменути наиб дошао на шеријатски скуп и известио и саопштио шта се догодило, стварно стање је записано и убележено. Ово је протекло и написано је двадесетог дана реби ул-евела хиљаду сто деведесет и шесте године [22. 2 / 5. 3. 1782].

Сведоци чина:

Славни међу једнакима, Хумбараџи Али-бег; имам Омер ефендија; хаџи Дервиш; Хасан спахија; Хасан-беше, [који] припада судници; Хасан челебија, позивар; Исмаил, син Алија.
[*Запис на полеђини*] [Да су] упали неки Турци и пребили Агиотафите Гаврила и оне око њега.[6]

[6] За превод грчког записа на полеђини захваљујем проф. др Дарку Тодоровићу.

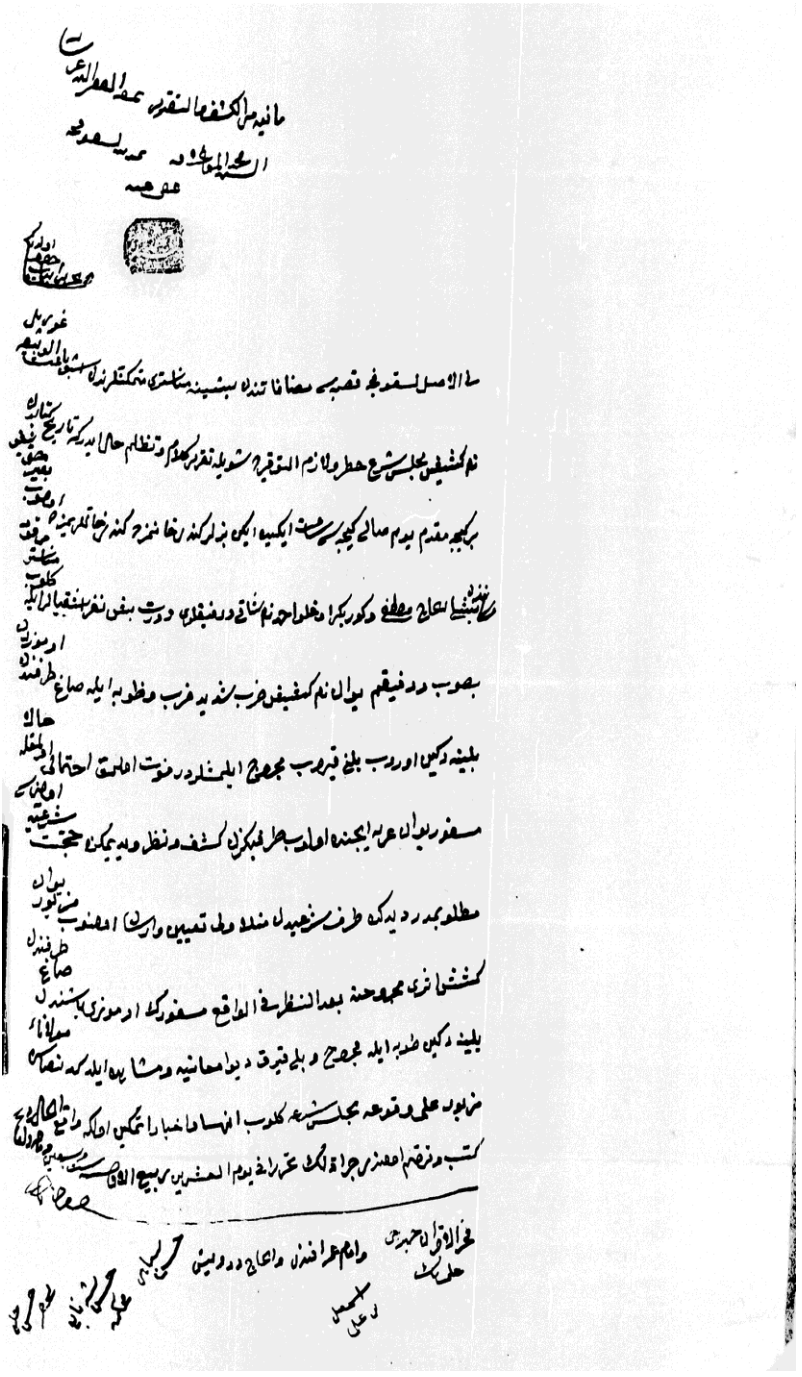
Транскрипција:

Hüve!
[*Овера*]
Mā fīhi min el-keşf ve-t-taḳrīr. Namaḳahu el-faḳīr ileyhi ‘azze şānuhu // Es-seyyid Meḥmed el-müvellā ḫilāfeten be-medīne-i Lesḳofçe. // ‘Ufiye ‘anhu.
[*Печат*] Es-seyyid Meḥmed [...?]

[1] Sebeb-i taḥrīr-i kitāb-i ḥaḳīḳ oldur ki: [2] Fī-l-āṣl Lesḳōfçe ḳaṣabası mużāfātından Yaşīne manāstırı mütemekkinlerinden işbu bā’iṣ ül-veṣiḳa Ġavrīl [3] nām keşīş meclis-i şer‘-i ḥaṭīr ve lāzım ut-tevḳīrde şöyle taḳrīr-i kelām ve tażallüm-i ḥāl ėder ki tārīḫ-i kitābdan [4] bir gėce muḳaddem yevm-i ṣalı gėcesi sā‘t ikide iken bizler kendi ḫānumuzda kendi ḫāllerümüzde olub Başir Ḥaḳ Toplu [?] [5] sükkānından beşli El-ḥāc Muṣṭafā ve Kör Bekiroğlu Aḥmed nām ṣāḳī[7] ve refīḳleri dört beş nefer eşḳiyālar ile gelüb manāstır-i merḳūme [6] başub ve refīḳüm Yōvān nām keşīş żarb-i şedīd żarb ve ẓūbe[8] ile ṣaġ ṭarafından omuzdan [7] beline değin urub belini ḳirub mecrūḥ eylemişlerdür fevt olunmaḳ iḥtimāli olmaġla ḥālā [8] mesfūr Yōvān ‘araba içinde olub ṭarafınuzdan keşf ü naẓar ve yedimüñüzi[9] ḥüccet-i şer‘iye imżāsı [9] maṭlūbumdur dėdikde ṭaraf-i şer‘iden monlā Velī ta‘yīn ve irsāl olunub mezbūr Yövān [10] keşiş[10] eser-ī[11] mecrūḥuna ba‘d en-naẓar fī-l-vāḳı‘ mesfūruñ omuzı başindan ṣaġ ṭarafından [11] beline değin ẓūbe ile mecrūḥ ve beli ḳırıḳ dėyü mu‘ayyene ve müşāhede eyledükdenṣoñra mevlānā-yī [12] mezbūr ‘alā vuḳū‘ihi meclis-i şer‘a gelüb inhā ve iḫbār etmegin ol ki vāḳi‘ ül-ḥālı [13] ketb ü terḳīm olundı. Cerā ẕalike taḥrīren fī[12] yevm ül-‘işrīn Rebī‘ ül-evvel sene sitt ve tis‘īn ve mi’e ve elf.
Şühūd ül-ḥāl:
Faḫr ul-aḳrān Ḥumbaracı ‘Alī Beg ve imām ‘Ömr Efendī ve El-ḥāc Dervīş, Ḥasan sipāhī, Ḥasan Beşe tabi‘-i meḥkeme, Ḥasan Çelebi muḥżīr, İsmā‘il bin ‘Alī.
[*Запис на полеђини*] Ὅτι εἰσελθόντες τινὲς Τοῦρκοι ἔδειραν τοὺς ἁγιοταφίτας Γαβριὴλ καὶ τοὺς περὶ αὐτόν.

[7] Треба да пише ṣaḳī.
[8] Треба да пише ẓube.
[9] Треба да пише yedimüzi.
[10] Треба да пише keşīş, како је уосталом претходно једанпут и написао. Има и других показатеља да писар није био превише образован. Често изоставља nām после имена.
[11] Треба да пише eṣer-i.
[12] Треба да пише cerā ẕalike ve ḥurīre fī, како је то уобичајено у хуџетима.

Документ



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AN ACT OF BANDITRY AGAINST THE JAŠUNJA MONASTERY IN 1782

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Summary

Original information on the Jašunja monasteries is exceptionally rare before the 19th century. The Ottoman archival material kept in the practically inaccessible archive of the Jerusalem Patriarchate includes a very important document which testifies to the act of robbery committed in the "Jašunja monastery", most likely the monastery of St John the Forerunner. In the early evening of Monday, February 22nd 1782, a few Muslim men broke into the monastery and lethally wounded a monk, Jovan, ripping him open from shoulder to stomach with a blade. Another monk, Gavril, immediately informed the kadı of Leskovac, asking that an investigation be conducted and a hüccet (the kadı court document) about it made. The most reasonable explanation for the hüccet ending up in the archive of the Patriarchate of Jerusalem is that it was found among the effects of monk Gavril who had obviously set out on a pilgrimage some time after the robbery, managed to pay his respects to the Holy Sepulchre but then died there. The analysis of the document is instructive of the legal procedure followed by the Ottoman authorities and their conduct towards the monasteries in the case of robberies. The document also substantiates the view that the Ottoman Empire's impoverished European provinces saw an increasing crime rate in the second half of the 18th century.

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О РОМАНИЗАЦИЈИ СТАНОВНИШТВА НА ЈУГУ ПРОВИНЦИЈЕ ДАЛМАЦИЈЕ НА ОСНОВУ ИСТОРИЈСКИХ ИЗВОРА[a] (Примјери из источне Херцеговине)

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Апстракт

У раду се на основу историјских извора представљају подаци о политици романизације становништва на југу провинције Далмације (источна Херцеговина). Након освајања Илирика и формирања провинције Далмације, почетком I вијека нове ере, Римљани на стратешки важним тачкама подижу читав систем утврђења које прати изградња путева, подизање насеља, насељавање ветерана и Италика, давање грађанских права, као и поштовање римских богова. То је вријеме не само територијалних већ и етничких и инфраструктурних промјена. Сачувани епиграфски споменици указују на то да су на подручју данашње источне Херцеговине у римском периоду, поред домаћег становништва, живјели и досељени римски грађани (cives Romani). Италска компонента била је значајна, а продирању римске културе и цивилизације, као и римског начина живота, највише су допринијели Италици, који су се населили у урбаним средиштима доносећи са собом све тековине римске цивилизације, која је на различите начине продирала међу домаће становништво. Епиграфски споменици, разноврсни археолошки налази и наративни извори донекле освјетљавају ове токове на простору источне Херцеговине. Источна Херцеговина обухвата подручје од лијеве обале Неретве на западу, па до десне обале Требишњице на истоку.

Кључне речи: романизација, становништво, Италици, Илирик, источна Херцеговина, провинција Далмација, епиграфски споменици.

[a] Рад је резултат истраживања у оквиру научноистраживачког пројекта *Косово и Метохија између националног идентитета и евроинтеграција* (III 47023), који финансира Министарство просвете, науке и технолошког развоја Републике Србије.

HISTORICAL SOURCES ON THE ROMANIZATION OF THE POPULATION IN THE SOUTH OF THE PROVINCE OF DALMATIA (Examples from East Herzegovina)

Abstract

The paper presents data on the politics of romanization of the population in the south of the province of Dalmatia (east Herzegovina) using historical sources. After the Roman invasion of Illyria and the introduction of education to the province of Dalmatia at the beginning of the 1st century AD, the Romans built a system of fortresses on important strategic points, followed by road construction, settlement construction, populating the area with veterans and the Italic people, giving civil rights and establishing a tradition of worshipping Roman gods. This was the time of not just territorial, but ethnic and infrastructural changes as well. According to the epigraph statues, the territory of today's east Herzegovina was inhabited by the locals, as well as Roman citizens (cives Romani) during this period in history. The influence of the Italic people was considerable because the introduction and importance of the Roman culture and civilization, as well as the Roman lifestyle, were helped mostly by the Italic people who inhabited urban areas. They brought with themselves every single achievement of the Roman civilization, which influenced the locals in various ways. Epigraph statues, various archeological records and oral sources shed light, to a certain degree, on the different influences on the territory of east Herzegovina. East Herzegovina covers the area spreading from the left banks of the Neretva River in the west to the right banks of the Trebišnjica River in the east.

Key words: romanization, population, the Italic people, Illyria, east Herzegovina, the province of Dalmatia, epigraph statues.

УВОД

Приликом истраживања на југу римске провинције Далмације (подручје источне Херцеговине), усмјерили смо пажњу на област Требишњице са околином у античком периоду; при чему нам је територијално ограничење омогућило пажљивије и свестраније проучавање материјалних остатака и наративних историјских извора. Предмет нашег рада је историја насеља *Pardua*, *Ad Zizio*, *Asamum*, *Leusinium* и *Salluntum* са њиховом околином у антици, у оквиру Горњег Илирика, тј. римске провинције Далмације; а његов задатак је да подстакне даља истраживања античке цивилизације на ширем подручју. Дакле, рад ће обухватати прошлост краја омеђеног ријекама Требишњицом, Брегавом и Заломком у антици, а истраживање античке цивилизације истовремено ће нам приближити и предантичко стање.

Сматрамо да веће изгледе за коначан успјех има онај приступ истраживањима који проблем посматра у ширем мултидисциплинарном контексту, тј. који узима у обзир већину компонената и фактора који сачињавају историјски развој друштва. Отуда је и за истражива-

ње историје овог подручја потребна једна историјска синтеза војног, политичког, економског и културног дјеловања, уз временско и просторно разграничење; што и јесте основни задатак овог дјела. Простор који истражујемо и подаци које ово подручје пружа о времену које разматрамо могу бити корисни и у упоређивању са другим областима из дубљег залеђа Јадрана. Као што смо претходно навели, у овом раду обрађујемо војно, политичко, економско и културно дјеловање Рима на југу провинције Далмације. Међутим, да бисмо потпуније сагледали његово дјеловање на овом подручју, потребно је заћи мало дубље у унутрашњост; природним пролазима кроз тешке масиве Динарида и путем од мора ка залеђу. У овом случају, ријеч је о залеђу источне обале Јадрана или подручју између планина и мора, које је од најранијих дана представљало копчу између Медитерана и континенталног дијела Балкана. Наше временско опредјељење пак за период праисторије и антике – са тежиштем на раздобљу од I до IV вијека н. е. – сматрамо логичним, јер је ријеч о донекле заокруженој цјелини. Наиме, епиграфски материјал и археолошки остаци који се налазе на простору источне Херцеговине потичу углавном из поменутог временског оквира.

У овом раду пажњу смо усмјерили на археолошка истраживања, наративне изворе и обилазак локалитета. Настојали смо да крајње резултате наших истраживања повежемо са епиграфским споменицима и наративним изворима, консултујући старија дјела од непроцјењивог значаја, тј. да кроз студирање постојеће историјске грађе и коришћење резултата разних научних дисциплина дођемо до једне опште синтезе. Наш циљ био је и да кроз наративне изворе и ономастику становништва које је насељавало подручје источне Херцеговине укажемо на степен и фазе романизације овог подручја. Покушали смо, дакле, да прикажемо све компоненте континуираног историјског развоја источне Херцеговине са околином, у оквиру Илирика, тј. Далмације, и то у једном општем историјском контексту; водећи рачуна о свим специфичностима што их свако подручје у овој области посједује. Осим тога, намјера нам је да кроз приказ антике у источној Херцеговини подстакнемо и пробудимо и код других жељу за потпунијим сазнањима и даљим истраживањима античке цивилизације, јер је античка култура, као што знамо, темељ не само савремене европске него и свјетске цивилизације.

УРБАНИЗАЦИЈА НА ЈУГУ ПРОВИНЦИЈЕ ДАЛМАЦИЈЕ

Римљани су западне области Балканског полуострва освојили постепено, током ратова вођених од III вијека прије н. е. до почетка I вијека н. е. Може се рећи да је тада Илирик, ради бољег надзора становништва и лакшег управљања и утврђивања нове власти, био по-

дијељен у двије провинције – Далмацију и Панонију. Сматра се да је организација овакве подјеле започета у 7/8. години н. е. и спроведена до краја 9. године. Тако се са завршетком далматско-панонског устанка (6–9. године н. е.) судбина источне Херцеговине везује за провинцију Далмацију. И док су претходни период обиљежили догађаји везани за војно освајање Илирика, наступајуће раздобље од I до краја III вијека н. е. типично је по продирању римске културе и цивилизације на Балкан и раду на организацији управе. То је вријеме не само територијалних већ и етничких и инфраструктурних промјена (Vell. II 39; II 96; II 110–116; II 114; II 115; Strab. IV 6, 10; VII 5, 5; App. Ill. 10, 11; 14, 16–19, 21, 22, 27, 28; Ptol. II 14, 4; Plin. HN III 142; III 148; Dio XLVII 21, 6; XLIX 34, 1–3, 35, 2–4; 36; 37, 6; 38, 3–4; LIV 20, 2; LIV 24, 3; LIV 34, 4; LV 2, 4; LVI 12–14; LVI 15, 3; Liv. XXVI 24; XXVII 30; XXIX 12; XL 42; XLII 26; XLIII 18–20; XLV 43; Polyb. II 8–12; III 16; V 108; XVIII 47; Zippel, 1877, стр. 37, 130; Patsch, 1922, стр. 53–59; Šišić, 1925, стр. 103–154; Вулић, 1926а, стр. 38–54; Вулић, 1926б, стр. 55–75; Betz, 1939, стр. 3; Novak, 1948, стр. 129–152; Neurath, 1957, стр. 117; Jagenteufel, 1958, стр. 1–146; Pavan, 1958, стр. 9–16, 85–94, 199–200, 202–205; Mócsy, 1962, стр. 547–744; Novak, 1966, стр. 1–84; Papazoglu, 1967a, стр. 11–21; Papazoglu, 1967б, стр. 123–144; Suić, 1967, стр. 179–196; Rendić-Miočević, 1967, стр. 253–310; Wilkes, 1969, стр. 15, 46–77, 156, 165, 172, 174, 176; Garašanin, 1967, стр. 104–117; Pašalić, 1975; Zaninović, 1980, стр. 173–180; Bojanovski, 1988, стр. 22–74; Rendić-Miočević, 1989, стр. 425–427; Ферјанчић 2002, стр. 175; Čače 2003, стр. 29–48; Mesihović, 2010, стр. 94–97; Mesihović, 2011, стр. 33–442; Самарџић, 2015, стр. 143–170, 279–319).

По освајању Илирика и образовању провинције Далмације, почетком I вијека н. е. Римљани на стратешки важним тачкама подижу читав систем утврђења која прати изградња путева, подизање насеља, насељавање ветерана и Италика, давање грађанских права, као и поштовање римских богова. Све наведене карактеристике романизације могу се подијелити и истражити на основу двије компоненте, а то су урбанизам и ономастички материјал (Balif, 1893, стр. 7–8; Domaszevski, 1902, стр. 158–211; Mayer, 1940, стр. 134–136; Pašalić, 1953, стр. 286; Rendić-Miočević, 1960, 163–171; Zaninović, 1967, стр. 5–28; Martinović, 1974, стр. 12–18; Bojanovski, 1974, стр. 26–28; Шкриванић, 1975, стр. 50–51; Цермановић–Кузмановић, 1975, стр. 19–20; Bojanovski, 1980, стр. 41–72; Zaninović, 1980, стр. 178; Paškvalin, 1986, стр. 153–156; Bojanovski, 1988, стр. 65–115; Ферјанчић, 2002, 56–69, 103–118, 175–181; Самарџић, 2015, стр. 143–170, 171–278, 321–333; Самарџић, 2016, стр. 227–237).

Почетак постепене романизације, схваћене као процес прилагођавања Илира римском начину живота, треба тражити и у времену које је претходило ратним сукобима и окупацији Илирика. Наиме, и

прије оснивања римских колонија на јужном Јадрану су постојале мање групе досељених Италика. Нумизматички налази указују на то да су и у предримско доба трговачки односи Римљана и Илира у Илирику били на завидном нивоу. То, посредно, потврђују и живе трговачке везе између Панонаца у сјеверном дијелу Илирика и сјеверне Италије. Панонци су извозили стоку, кожу и робове, а Римљани уље, вино, керамику, стакло и друге врсте робе и производа (Mócsy, 1959, стр. 94–105; Bojanovski, 1988, стр. 65–74; Самарџић, 2015, стр. 143–170, 171–278, 321–333). О римском утицају, који је допирао све до Паноније, свједочи и Велеј Патеркул, који наводи како су у Панонији и прије римског освајања били познати римски језик и писмо (Vell. II 110, 5). Романизација Илира је постепено доводила до напуштања домаћих форми живота и културних традиција, односно прилагођавања новонасталој ситуацији кроз прихватање нових облика и видова културног живота. Најважније је било ставити домородачко становништво у административне и правне оквире, што је представљало почетак њиховог укључивања (интеграције) у Римску државу. Претварање слободних племена у перегрине заједнице значио је успостављање контроле над одређеним географским подручјима и организација одговарајућих институција. Поред тога што су *civitates* биле организоване на племенском принципу и уживале извјестан степен унутрашње аутономије, са успостављањем римске власти, оне престају да буду независне и постају римске административне јединице (Mócsy, 1959, стр. 94–105; Bojanovski, 1988, стр. 65–74; Rendić-Miočević, 1989, стр. 425–427; Грбић, 2014, стр. 293–305; Самарџић, 2015, стр. 143–170, 171–278, 321–333).

Ради утврђивања мира у илирским подручјима, римска власт је отпочела са изградњом комуникација. Градња путева почиње у Августово доба (27. године прије н. е. – 14. године н. е.), када је изграђен велики број саобраћајница које су повезивале насељена мјеста на југу провинције Далмације, а наставља се и за вријеме владавине Тиберија (14–37. године) и Клаудија (41–54. године), што је прогресивно утицало на размјену и транспорт добара и изградњу насеља, од чега ће сви, па тако и Царство, имати користи. Међутим, интересовање за путеве јављало се и касније, у III и IV вијеку, када су се интервенције на комуникацијама односиле углавном на њихове поправке. Сматрамо да је брзој изградњи путева у Далмацији, поред војних и политичких интереса Рима, допринијело и коришћење затечених путева или њихових дијелова на појединим путним правцима. Сви главни путни правци на југу провинције су саставни дио јединственог система комуникација Далмације (Pašalić, 1960, стр. 60–78; Zaninović, 1966, стр. 62–69; Bojanovski, 1974, стр. 37–38; Cambi, 1980, стр. 127; Gabričević, 1980, стр. 161–164; Bojanovski, 1982, стр. 90; Bojanovski, 1988, стр. 65–115; Самарџић, 2014, стр. 357–371; Самарџић, 2015, стр. 171–183).

Један од основних путних праваца Далмације – Аквилеја – Салона – Дирахијум пролазио је југом провинције (данашња источна Херцеговина, јужна Хрватска и Црна Гора). Сви путеви на овом простору повезивали су приморје са унутрашњошћу. Југ Далмације, од запада према југу, пресијецале су двије комуникације. Главна је полазила из станице Вид код Метковића (*Narona*) и преко станица Тасовчићи (*Ad Turres*), Столац (*Diluntum*) и Градац код Љубиња (*Pardua*) долазила у станицу Моско или Укшићи (*Ad Zizio*), гдје се налазило раскршће путева (Tab. Peut. 467, 468, 469, 470; Rav. Cosm. IV 16; V 14; Gvi. Geog. 114). Одатле се један крак одвајао према југу, преко станице Цавтат (*Epidaur*) и даље обалом Јадрана, да би данашњом црногорском обалом дошао у станицу Скадар (*Scodra*) – (Plin. HN III 22; Ptol. Geog. II 16, 3; II 16, 7; Tab. Peut. 467, 468, 469, 470; It. Ant. 337, 338, 339; Rav. Cosm. IV 16; V 14). Други крак се са поменуте раскрснице одвајао према истоку и ишао преко станица Паник (*Leusinium*), Ријечани (*Salluntum*) и Никшић (*Anderba*) кроз унутрашњост Далмације, све до станице Скадар (*Scodra*), гдје су се оба крака пута спајала у једну комуникацију, која је од ове станице ишла ка Драчу и Солуну. Обје комуникације су повезивале приморје са унутрашњошћу природним пролазима кроз тешке масиве Динарида (Tab. Peut. 467, 468, 469, 470. Уп. Sergejevski, 1962а, стр. 73–105; Sergejevski, 1962б, стр. 111–113; Bojanovski, 1975, стр. 15–38; Шкриванић, 1975, стр. 50–51; Церамановић–Кузмановић, 1975, стр. 19–20; Самарџић, 2015, стр. 184–278). Нови путеви су, дакле, поред осталог, допринијели и привредном и културном развоју (Pašalić, 1960, стр. 60–78; Zaninović, 1966, стр. 62–69; Bojanovski, 1974, стр. 37–38; Cambi, 1980, стр. 127; Gabričević, 1980, стр. 161–164; Bojanovski, 1982, стр. 90; Bojanovski, 1988, стр. 65–115; Самарџић, 2014, стр. 357–371; Самарџић, 2015, стр. 171–183).

Изградња комуникација је подстакла подизање насеља и интензивнију урбанизацију. Насеља се најчешће подижу на равницама испод значајнијих градина (*oppida*), а развијају се из племенских центара, путних станица или војних логора (Pašalić, 1960, стр. 79–102; Zaninović, 1967, стр. 5–28; Bojanovski, 1974, стр. 239–240; Zaninović, 1980, стр. 178; Paškvalin, 1986, стр. 153–156; Bojanovski, 1988, стр. 65–115). У новоподигнута насеља су се досељавали и Илири из околине, па су у контакту са војницима, државним службеницима, трговцима и колонистима примали и другима преносили тековине римске материјалне и духовне културе (Čremošnik, 1960/1961, стр. 172–182; Kojić, 1960/1961, стр. 185–187; Sergejevski, 1962а, стр. 73–105; Sergejevski, 1962б, стр. 111–113; Čremošnik, 1976, стр. 41–164; Самарџић, 2015, стр. 279–319). Ипак, о животу домаћег становништва веома мало се зна. Познато је да су њихова насеља била грађена у сувозиду или од локалног материјала који је брзо пропадао, док судбина градинских

насеља у почетку римске управе није у потпуности јасна – претпоставља се да се у њима живот постепено гасио. Касније, у условима мира, домаће становништво се с временом насељавало у долинама и на пољима. Данас располажемо са нешто више података о насељима која носе обиљежја изразито римског карактера (зидани камен, цигла и малтер) – (Balif, 1893, стр. 7–8; Domaszevski, 1902, стр. 158–211; Mayer, 1940, стр. 134–136; Pašalić, 1953, стр. 286; Zaninović, 1967, стр. 5–28; Bojanovski, 1974, стр. 26–28; Martinović, 1974, стр. 12–18; Bojanovski, 1980, стр. 41–72; Zaninović, 1980, стр. 178; Paškvalin, 1986, стр. 153–156; Bojanovski, 1988, стр. 65–115).

Сматра се да се низинска насеља у Херцеговини појављују око I вијека прије н. е. То се подудара са временом када трговачка насеља у Епидауру и Нарони прерастају у конвенте римских грађана (*conventus civium Romanorum*), у којима дјелују римски трговци. Вођени трговачким интересима, они се помјерају у унутрашњост земље, гдје се стално или привремено насељавају (вјероватно под заштитом војске). Тако на простору Херцеговине долази до формирања мањих насеља, па се – у односу на раније вријеме – етничка слика овог подручја у римско доба почиње мијењати (Truhelka, 1892, стр. 350–352; Fiala, 1893, стр. 511–517; Alföldy, 1965, стр. 139; Гарашанин, 1967, стр. 141–277; Wilkes, 1969, стр. 252; Marić, 1973, стр. 109–135; Suić, 1976, стр. 23, 35; Bojanovski, 1988, стр. 65–115; Самарџић, 2015, стр. 143–278).

Да би се разумјела природа античких насеља и насељеност на југу Далмације уопште, треба поћи од географских карактеристика овог простора, начина урбанизације која је спровођена изградњом муниципалне самоуправе у рано царско доба, као и од општих војнополитичких догађаја. Присуство сталних војних посада и њихових пратилаца, прије свега трговаца и занатлија, на југу Далмације, у вријеме учвршћивања римске власти, допринијело је одржавању мира и изградњи насеља и путева, чиме је постављен темељ за урбанизацију и романизацију ове области. Можемо рећи да је формирање насеља на југу Далмације зависило како од природних тако и од друштвено-економских фактора. Са римском управом, на југ провинције дошло је и ново вријеме, које је освојеним илирским областима донијело и нове тековине: приморски дио са својим ближим залеђем улази у сферу романизације; дакле војни, политички, економски и културни утицај који су доносиле римске легије, италски трговци и досељеници, полако се уграђује у живот домаћег становништва, а све то се одражава и на проширивање старих и подизање нових насеља. Нови градови, чији развој почиње почетком нове ере, постају управни, војни, трговачки и занатски центри, док у романизацији нарочито предњаче имања појединих породица (*fundi*) са бројним вилама (*villae rusticae*), на којима су Илири упознавали непознате културе (разно воће и поврће, житарице), те обраду земљишта и узгој сто-

ке на имањима (Bojanovski, 1980, стр. 41–72; Zaninović, 1980, стр. 178; Bojanovski, 1980, стр. 41–70; Paškvalin, 1986, стр. 153–156; Bojanovski, 1988, стр. 75–115; Самарџић, 2015, стр. 143–278).

Када су Римљани дошли на југ Илирика, главни тип насеља биле су градине у чијим су се предграђима налазила мања села (*pagus*). Осим њих, дуж приморја је постојало и неколико утврђених градова. На основу сачуваних остатака, може се рећи да су та насеља имала карактер утврђења. Како су са подизањем градова на југу провинције Далмације Римљани почели одмах након заузимања Илирика, градови као што су *Risinum*, *Acruvium*, *Butua* и *Vicinium*, као и насеља *Pardua*, *Ad Zizio*, *Asamum*, *Leusinium* и *Salluntum*, изграђени су, то јест дограђени, на домаћим темељима. Управо ови градови постају центри управе, привредног живота и римске културе и у великој мјери доприносе спровођењу романизације (Pašalić, 1960, стр. 65–67, 79–110; Гарашанин, 1967, стр. 141–277; Martinović, 1974, стр. 12–18; Čremošnik, 1976, стр. 41–164; Bojanovski, 1980, стр. 41–72; Zaninović, 1980, стр. 178; Bojanovski, 1980, стр. 41–70; Paškvalin, 1986, стр. 153–156; Bojanovski, 1988, стр. 75–115; Самарџић, 2015, стр. 143–278).

Величина и значај старих илирских насеља нису нам довољно познати због слабе очуваности њихових остатака. Археолошки извори свједоче да су илирска насеља и утврђења била изграђена од дрвета и камена сазиданог у сувозиду. За разлику од њих, подаци о римским градовима су бројнији и поузданији, захваљујући релативно бројним археолошким остацима на терену и записима античких писаца. Римска насеља и зграде препознајемо по грађевинском материјалу (цигла, цријеп, камен и дрво) будући да су у вријеме заузимања југа Далмације Римљани већ познавали начин градње са цријепом и каменом, уз примјену малтера, а то су пренијели и у новоосвојене области (Pašalić, 1953, стр. 286; Pašalić, 1960, стр. 65–67, 79–110; Zaninović, 1967, стр. 5–28; Bojanovski, 1974, стр. 26–28; Martinović, 1974, стр. 12–18; Čremošnik, 1976, стр. 41–164; Bojanovski, 1980, стр. 41–72; Zaninović, 1980, стр. 178; Bojanovski, 1980, стр. 41–70; Paškvalin, 1986, стр. 153–156; Bojanovski, 1988, стр. 75–115; Самарџић, 2015, стр. 143–278).

Изнад откривених локалитета римских насеља налазила су се утврђења (градине). Њихов положај најчешће доминира окружењем, а разни археолошки остаци указују на видљивост зидова некадашњих кастела. Зидови су рађени од ломљеног и обрађеног камена са малтером, док су на самим утврђењима запажени улази (Самарџић, 2015, стр. 250–258). Утврђења су подизана да штите насеља и трасу комуникације која је пролазила недалеко од узвишења. Најчешће се радило о војничкој римској станици поред или усред илирско-римског насеља, односно о утврђењу које представља истурени или гранични кастел (Alačević, 1878, стр. 21–51; Radimsky, 1891, стр. 169,

175; Pašalić, 1960, стр. 65–66, 103; Pašalić, 1965, 243–260; Гарашанин, 1967, стр. 173; Kujović, 1976, стр. 123–137; Мијовић / Ковачевић, 1975, стр. 48–51; Цермановић–Кузмановић / Велимировић-Жижић / Срејовић, 1975, стр. 200, сл. 80, инв. бр. 23; Bojanovski, 1977a, стр. 67–98; Bojanovski, 1977б, стр. 83–152; Atanacković-Salčić, 1979, стр. 7–36; Marković, 2006, стр. 338; Samardžić, 2013, стр. 51–66; Самарџић, 2015, стр. 143–183). С тим у вези, интересантан је податак који налазимо у записима Диона Касија о борби Илира и Римљана око илирског утврђења Андетријума (Мућ, сјеверно од Сплита) – за вријеме Батоновог рата од 6. до 9. године н. е. – а у коме се наводи како су браниоци утврђења на припаднике римских јединица бацали камење, точкове и кола натоварена каменом. Из тога се може закључити да су и илирска утврђења била повезана путевима којима су се кретала њихова кола (Dio. LVI 14).

Да би придобили аристократске слојеве домаћег становништва, Римљани су много прије него што би им био додијељен римски цивитет подржавали и усвајали самоуправни орган ендогене заједнице познате као *civitates*, то јест племенске општине или појединa утврђена насеља (*oppida*, *castella*) којима су, на традиционалан начин, управљале домаће старјешине (*principes*). На то нам указују епиграфска свједочанства са локалитета *Salluntum* (Ријечани) – (ILJug 1852; ILJug 1853). Оснивање институције домаћег принцепса, који је био на челу заједнице, било је најбољи пут за стварање лојалне аристократије у круговима домородаца и, истовремено, најважнији корак за укључивање домаћег становништва у живот римских градова (Vulić, 1905, стр. 172–175; Alfoldy, 1965, стр. 144, 177).

Прерастање племенских (перегринских) насеља у муниципијуме (аутономне градове) представља највећи домет романизације и урбанизације, без обзира на то што је у новим муниципијумима грађански статус становништва био различит све до доношења Каракалиног едикта 212. године. Процес урбанизације био је постепен и повезан са стицањем грађанских права домаћег становништва. Муниципијумима су постајали центри племенских заједница у којима је усљед романизације порастао број домаћих грађана са римским цивитетом, толико да су сами могли управљати градом и његовом територијом, а муниципијум се третира као субјект са локалном аутономијом, дјелимично са својим правом и законима, усклађеним са римским законодавством. Њиме управљају угледне породице чији су припадници чланови вијећа декуриона (*decuriones*, *ordo decurionum*), међу којима се бирају два врховна магистрата, тј. начелника (*duumviri*) и други нижи магистрати (*aediles*, *quaestores*). Намети су се централној власти плаћали по глави и појединачно, што значи да је порезе плаћао цијели муниципијум. Када би држава проценила да су се стекли услови да се неко од домородачких насеља уздигне на ранг

муниципијума, његове становнике је инкорпорисала у нову, римску правно-политичку заједницу, додјељујући им грађански статус.

Политика романизације на југу Далмације огледала се и у подизању градова по римским узорима. Археолошки налази и наша истраживања показују да је залеђе далматинске обале било у значајној мјери захваћено римском урбанизацијом иако се до данас сматрало супротно (нпр., насеља из унутрашњости су *Pardua, Ad Zizio, Asamum, Leusinium, Salluntum*). Међутим, у односу на унутрашњост провинције, утицаји војске, колониста, трговаца и римске управе допринијели су ранијем усвајању римског начина живота на југу Далмације. Поред тога, у градовима се организовала и стварала домаћа и досељеничка земљопосједничка аристократија на коју се царска власт ослањала при спровођењу своје политике (Pašalić, 1960, стр. 65–67, 79–110; Zaninović, 1967, стр. 5–28; Bojanovski, 1974, стр. 26–28; Martinović, 1974, стр. 12–18; Čremošnik, 1976, стр. 41–164; Bojanovski, 1980, стр. 41–72; Zaninović, 1980, стр. 178; Bojanovski, 1980, стр. 41–70; Paškvalin, 1986, стр. 153–156; Bojanovski, 1988, стр. 75–115; Самарџић, 2015, стр. 143–278).

НАСЕЉАВАЊЕ И ДИЈЕЉЕЊЕ ГРАЂАНСКИХ ПРАВА (CIVITET) СТАНОВНИШТВУ НА ЈУГУ ПРОВИНЦИЈЕ ДАЛМАЦИЈЕ

Умиривање Илира у Далмацији пратило је организовано насељавање Италика и ветерана (*iussu principis*), чиме се и отварао простор за романизацију домаћег становништва (Zippel, 1877; Cons, 1882; Miller, 1916; Betz, 1939; Jagenteufel, 1958; Pavan, 1958; Alföldy, 1964, стр. 167–179; Alföldy, 1965; Гарашанин, 1967, стр. 141–277; Wilkes, 1969; Bojanovski, 1988; Rendić-Miočević, 1989; Škegro, 1999; Ферјанчић, 2002; Mesihović, 2011; Самарџић, 2015, стр. 279–300). На основу скромног броја натписа, може се наслутити понешто о досељавању странаца (прије свега Италика) у унутрашњост данашње источне Херцеговине, као и о њиховом ширењу долинама Неретве, Брегаве и Требишњице (Bojanovski, 1962, стр. 11–12; Alföldy, 1965, стр. 134–144; Wilkes, 1969, стр. 223–252; Bojanovski, 1977a, стр. 67–98; Самарџић, 2015, стр. 279–300), док је до сада откривен само један ветерански натпис, и то из Дубрава код Стоца (ILJug 1907). О присуству Италика у овим крајевима већ у посљедњим деценијама I вијека прије н. е. свједочи и почасна база из 36/35. године прије н. е., нађена у Тасовчићима код Чапљине (CIL III 14625 = ILS 8893). М. Паван наводи да су *Papii* угледна и позната италска породица која је имала велике посједе у Нарони, Чапљини и Тасовчићима (Pavan, 1958, стр. 167), док је у Стоцу, на локалитету Фабрика ентеријера, пронађен натпис који помиње породицу Цесидијеваца. Г. Алфелди њихове натписе смјешта у III вијек н. е. и сматра могућим да се ова

породица доселила из Салоне или Италије у Дилунтум крајем II вијека н. е., а да су поријеклом из средње или јужне Италије (Alföldy, 1969, стр. 69).

О италским досељеницима у источној Херцеговини римског доба свједочи и неколико епиграфских споменика нађених у долини Требишњице. На локалитету Прло (Паник) пронађен је фрагмент надгробне стеле са дјелимично очуваним натписом (ILJug 651b). Истраживачи претпостављају да род Вилијевци (*Vilii*), посвједочен у првом сачуваном реду натписа, припада слоју римских грађана који су се у раноцарско доба као трговци, занатлије, земљопосједници или ветерани доселили из Италије. Натпис се смјешта на крај II и почетак III вијека н. е. (Bojanovski, 1977, стр. 70, бр. 2; Škegro, 1997, стр. 91, br. 2; Šačić, 2011, стр. 169; Самарџић, 2016, стр. 229–230). За подручје источне Херцеговине од нарочите је важности, и то из неколико разлога, међашни натпис из Косијерева (ILJug 647) који потиче из периода династије Флавијеваца: најприје јер потврђује постојање велепосједа породице *Vesii* у Панику (*fundus Vesius*), а потом јер свједочи о поправци моста на ријеци Требишњици, као и о обнови међаша на њеној лијевој обали – радовима који су предузети по наређењу провинцијског намјесника (*pontem et terminos renovari iussit*). Г. Алфелди сматра да су *Vesii* италска породица, а познати су у провинцији Далмацији још у доба раног царства (Alföldy, 1969, стр. 69; Bojanovski, 1977, стр. 92, sl. 11). Такође, значајан је и оштећени надгробни споменик са непотпуним натписом у двоструком оквиру са локалитета Величана (Попово поље) код Требиња. Са садржајне стране натпис доноси више имена, али је због оштећености тешко читљив. Сматра се да је у овом натпису *Mascellio* наведен у служби гентилног имена, што упућује на особу која нема грађанско право (AE 1977, 611. Уп. Bojanovski, 1977, стр. 74–76; Škegro, 1997, стр. 91, br. 35) и претпоставља да је ријеч о имену италског или келтског поријекла (Alföldy, 1969, стр. 240).

Наиме, Р. Зотовић наводи да се први знаци војно-политичке и економске фазе романизације на источном дијелу римске провинције Далмације могу уочити од средине I до средине II вијека. Послије тога, у епиграфском као и другом археолошком материјалу, видљив је већи степен романизације, не само војно-политичког и економског типа, већ шире, укључујући социјалне факторе становништва кроз римске стандарде живота и културе (Zotović, 2004, стр. 19–38). Исто тако, она истиче да анализа епиграфског материјала, на источном дијелу римске провинције Далмације, показује да се могу пратити двије групе становништва. Једну групу, која се може пратити преко ономастичких формула – углавном двочланих, а ријетко трочланих или четворочланих – са гентилицијем Аелиус, чини домородачко становништво, док другу групу сачињава досељено становништво,

које је већ било романизовано на својим матичним подручјима. Друга група становништва се према именској номенклатури може окарактерисати као мјешовита група италског, грчког и илирског становништва (Zotović, 2004, стр. 19–38).

Процес романизације на подручју источне Херцеговине може се пратити и по епиграфским споменицима нађеним у Коњицу и његовој околини. Тако, у тексту надгробног споменика из Лисичића читамо да је Луције Петроније Максим за живота надгробни споменик подигао себи, својој породици и својој покојној жени Елији Руфини (ILJug 87). Сматра се да је највјероватније био досељеник из Италије или је припадао породици која се доселила са Апенинског полуострва, будући да има номен који није царског поријекла. Максимова супруга је вјероватно домаћег поријекла јер има гентилно име *Aelia*. Пошто се натпис смјешта на крај II или почетак III вијека, претпостављамо да је њена породица римско грађанство добила за вријеме владавине Хадријана (117–138. године) – (Čremošnik, 1954, стр. 219–220; Šačić, 2011, стр. 72, 99–100). Такође, и вотивни споменик пронађен у Потоцима код Мостара говори о досељавању италског становништва на подручје Херцеговине (ILJug 1742 = AE 1906, 0185). Дедикант жртвеника била је женска особа италског поријекла Јунија Варена. Њен номен *Iunia* релативно је риједак на западном Балкану, док је когномен *Varena* италски, па је могуће да је ријеч о особи која се доселила у долину Неретве (Šačić, 2011, стр. 44–45, 139–140, 150; Самарџић, 2015, стр. 327).

Највећи дио становништва из залеђа источне обале Јадрана (долине ријека Требишњице, Заломке, Брегаве и Неретве), тј. унутрашњости на југу провинције Далмације, добио је грађанско право за вријеме владавине цара Публија Елија Хадријана (117–138. године) или Антонина Пија (138–161. године). То се види из епиграфских споменика на којима се најчешће појављује гентилно име *Aelius* (југоисточни дио Херцеговине). Мањи дио становништва, уз обалу и у унутрашњости провинције, добија грађанско право за вријеме владавине царева Клаудија, Веспазијана и његових синова, и Трајана. За разлику од ових парцијалних додјела грађанских права, *Constitutio Antoniniana* из 212. године завршава процес увођења домаћих маса у ред римских грађана. Зато се грађани који се јављају са гентилним именом *Aurelius* (сјевероисточни дио Херцеговине) убрајају у најмлађе припаднике римске државне заједнице (Alföldy, 1965, стр. 134–144; Wilkes, 1969, стр. 223–252; Bojanovski, 1977, стр. 67–98; Bojanovski, 1988, стр. 65–115; Самарџић, 2015, стр. 279–300).

Судећи по бројности епиграфских споменика у односу на остала подручја источне Херцеговине, долина горње Неретве била је најнасељенији дио те микрорегије. У долини горње Неретве није пронађен ниједан натпис који има чисто домаћу ономастику без

римских имена, али зато велики број келтских имена указује на значајан проценат тог становништва унутар илирског етничког корпуса (Šačić, 2011, стр. 80–81; Самарџић, 2015, стр. 282–294). Поред тога, на основу учесталости номена *Aelius* запажа се да је процес романизације у југоисточном дијелу Херцеговине већ у првој половини II вијека достигао врхунац, док се у сјевероисточним крајевима то дешава тек у III вијеку, јер тамо доминирају Аурелијевци. Истовремено, епиграфски споменици из долине Требишњице и Заломке свједоче да странци овдје нису били доминантан фактор (ILJug 651b; ILJug 647; Čremošnik, 1954, стр. 219–220; Čremošnik, 1960/1961, стр. 175; Sergejevski, 1964, стр. 93–95; Bojanovski, 1973, стр. 164–183; AE 1977, 611. Уп. Bojanovski, 1977, стр. 70, бр. 2, 74–76; Imamović, 1980, стр. 33–34, br. 3; Škegro, 1997, стр. 91, br. 2, br. 35; Šačić, 2011, стр. 72, 99–100, 164–166, 169), док их је у долинама Брегаве (Alföldy, 1969, 69; Atanacković-Salčić, 1979, стр. 14–16; Škegro, 1997, стр. 90, br. 29) и горње Неретве било знатно више (CIL III 14617, 2; CIL III 14625; ILJug 1742 = AE 1906, 0185; ILJug 87; ILJug 1911; Sergejevski, 1934, стр. 24; Pavan, 1958, стр. 167; Bojanovski, 1962, стр. 11–12; Alföldy, 1965, стр. 134–144; Alföldy, 1969, стр. 107, 191, 273, 343; Bojanovski, 1969, стр. 146–150; Wilkes, 1969, стр. 223–252; Bojanovski, 1977, стр. 67–98; Bojanovski, 1988, стр. 98; Škegro, 1991, стр. 62; Šačić, 2011, стр. 44–45, 79, 107–108, 121, 139–140, 150; Самарџић, 2015, стр. 279–295).

Поштовање римских богова на југу провинције Далмације, као и одсуство домаћих култова – по свему судећи – резултат је ране романизације. Илирска религија, тј. култна традиција домаћег становништва римске Далмације, била је својеврсна брана политици романизације коју је спроводио Рим, али не без компромиса. Наиме, домаће становништво, начето романизацијом, с временом је (дјелимично) прихватало поштовање римских божанстава и управо та култна изједначавања познајемо као *interpretatio Romana*, по којој се домаће божанство назива именом одговарајућег римског божанства (ILJug 1820; Praschniker / Schober 1919, 2–3; Марић 2003, 84–85). Сматра се да је тај процес започет у I вијеку прије н. е. (Rendić-Miočević, 1955, стр. 5–40; Medini, 1976, стр. 185; Medini, 1984, стр. 19–26; Bojanovski, 1988, стр. 68; Самарџић, 2015, стр. 321–333).

Религију античког човјека источне Херцеговине познајемо, прије свега, по археолошким налазима, а манифестовала се кроз поштовање великог броја култова ослоњених на илирску традицију, али и римска и оријентална божанства. Илирски богови су се кроз процес романизације постепено изједначавали са римским, тако да их на споменицима налазимо под римским именима. Примјера ради, домаћи Видасус био је поистовијећен са римским Силваном. Може се рећи да су овакви процеси и те како утицали на замирање традиција домаћег становништва (Rendić-Miočević, 1955, стр. 5–40; Imamović,

1975/1976, стр. 13–26; Medini, 1984, стр. 19–26; Rendić-Miočević, 1989, стр. 461–521; Самарџић, 2015, стр. 321–333).

Најпоштованије божанство у Риму и у свим крајевима гдје су се налазили Римљани – њихово врховно и главно божанство – био је Јупитер Капитолски (*Iuppiter Optimus Maximus*). Свако римско насеље на југу провинције Далмације поштовало је његов култ. Позната су три натписа из Стоца посвећена Јупитеру (CIL III 14631; CIL III 12776; ILJug 1910), при чему је први оштећен и тешко читљив. На другом натпису дедикант има номен *Aelius*, што упућује на закључак да су његови преци или он сам римско грађанство добили у периоду владавине цара Хадријана (117–138. године) или Антонина Пија (138–161. године) – (Radimsky, 1891, стр. 191, sl. 47; Truhelka, 1892, стр. 364; Imamović, 1977, стр. 362–363, sl. 92; Šačić, 2011, стр. 146–147). Такође, један епиграфски споменик посвећен овом божанству потиче из Коњица (CIL III 14617, 1), а конзуларски бенефицијар чије име се налази на натпису има номен *Iulius*. А. Шачић сматра да је ријеч о странцу јер је ово гентилно име најчешће код становништва поријеклом из Галије (Šačić, 2011, стр. 149), гдје је Јупитер био изузетно поштовано божанство и изједначавао се са домаћим божанствима. Споменик се смјешта у крај II вијека (Imamović, 1977, стр. 131; Šačić, 2011, стр. 146–147, 149).

ЗАКЉУЧАК

Римљани су западне области Балканског полуострва освојили постепено, током ратова вођених од III вијека прије н. е. до почетка I вијека н. е. Успостављање римске власти на подручју Илирика и формирање провинције Далмације означава почетак новог, мирнијег периода, што ће се одразити и на друштвени и привредни живот овог подручја, између осталог, и кроз увођење домаћег становништва у римски државно-политички поредак.

Регрутовање домаћег становништва, изградња комуникација и насеља, насељавање колониста и ветерана, дијељење грађанских права и изједначавање божанстава, тј. *Interpretatio Romana* – били су основни фактори романизације. Иако већина истраживача сматра да главнина Илира није до краја романизована, јер се нису изгубили сви етнички атрибути једног народа, расположиви извори ипак указују на то да је романизација постигла веће резултате него што се то до сада тврдило.

Судећи по бројности епиграфских споменика у односу на остала подручја источне Херцеговине, долина горње Неретве била је најнасељенији дио те микрорегије. На основу изостанка царских гентилација из I вијека, сматра се да је романизација на овом простору почела под Хадријаном (117–138) и Антонином Пијем (138–161),

с обзиром на значајан број Елија. Релативно велики број становника овог дијела провинције Далмације римско грађанство добија од Марка Аурелија (161–180), а посљедња фаза тог процеса врхунац достиже Каракалиним конституцијама 212. године.

Епиграфски споменици из долине Требишњице и Заломке свједоче да странци овдје нису били доминантан фактор, док их је у долинама Брегаве и горње Неретве било знатно више. Како њихов број није био занемарљив, јасно је да је улога Италика у процесу романизације на овом подручју била веома значајна. Иако поменути натписи са подручја источне Херцеговине пружају релативно скромне податке о саставу становништва, слика формирана на основу појединих гентилних имена мијења се са сваким новим налазом.

Анализирајући политички, економски и културни развој источне Херцеговине и јужне Далмације у периоду римске доминације, долазимо до закључка да су Римљани у материјалној култури Илира оставили дубоког трага. Анализа материјалних остатака пак упућује на значајне резултате романизације и у руралним областима, док су они у урбаним срединама били заиста велики. Отуда наше мишљење да је романизација имала велики одјек и успјех на овом подручју, што нам потврђују и доказују свједочанства са терена, а посебно епиграфски споменици из унутрашњости (залеђе Јадрана).

ДОДАТАК

Скраћенице

AE	L'Annee epigraphique. Revue des publications epigraphiques relatives a l'Antiquite romaine, Paris
ANU BiH	Akademija nauka i umjetnosti Bosne i Hercegovine, Sarajevo.
VAHD	Vjesnik za arheologiju i historiju dalmatinsku, Split.
GZM BiH	Glasnik Zemaljskog muzeja u Bosni i Hercegovini, Sarajevo.
ILS	Dessau, H. (1892-1916). Inscriptiones Latinae selectae I-III, Berlin.
JAZU	Jugoslovenska akademija znanosti i umjetnosti, Zagreb.
ILJug	Šašel, A. et J. Inscriptiones Latinae quae in Iugoslavia Inter annos MCMXL et MCMLLX rt inter annos MCMLX et MCMLXX et inter annos MCMII et MCMXL repertae et editae sunt. Ljubljana 1963, 1978, 1986, Situla 5, 19, 25.
RE	Paulys–Wissowa Realencyclopädie der classischen Altertumswissenschaft, University Göttigen`s Seminar for Classical Philology, Stuttgart–München.
SADJ	Savez Arheoloških Društava Jugoslavije.
SKA	Српска краљевска академија, Београд.
CBI	Centar za balkanološka ispitivanja, Sarajevo.
CIL	Corpus Inscriptiones Latinarum, Berolini.

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HISTORICAL SOURCES ON THE ROMANIZATION OF THE POPULATION IN THE SOUTH OF THE PROVINCE OF DALMATIA (Examples from East Herzegovina)

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Summary

The paper presents data on the politics of romanization of the population in the south of the province of Dalmatia (east Herzegovina) using historical sources. The Romans invaded the western areas of the Balkan Peninsula gradually during the wars fought from the 3rd century BC to the beginning of the 1st century AD. The Roman invasion of Illyria and the introduction of education to the province of Dalmatia at the beginning of the 1st century AD served as suitable opportunities for the Romans to introduce the Roman socio-political system to the local population.

The Roman rule in the area of the Italic people signified the beginning of a new, peaceful period, which reflected on social and economic life of this area. Recruiting the locals, the construction of fortresses, roads and settlements, populating the area with colonizers and veterans, giving civil rights and establishing deities, i. e. Interpretatio Romana, were the main factors that influenced romanization.

Analysing political, economic and cultural development of east Herzegovina (the south of the province of Dalmatia) during the Roman rule, we come to the conclusion that the Romans considerably influenced the material culture of Illyria. The analysis of the material remains emphasises the most crucial aspects of the success of romanization in rural areas while stating that it was a considerable success in urban areas. This confirms our hypothesis that the romanization had significant influence and was highly successful in this area, which is confirmed and proved by the remains, especially epigraph statues from the inland areas (Adriatic hinterland).

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ДИЈАЛОГ И МОНОЛОГ КАО КОМУНИКАЦИОНИ И КУЛТУРОЛОШКИ ФЕНОМЕНИ

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Апстракт

Сагледан као комуникациони и културолошки феномен медијски произведен, дијалог у улози посредовања добија манипулативни облик. Насупрот искреног дијалога, као комуникационог модела који заговара толеранцију и разумевање, дијалог постмодерних медија креће се од концепта заједништва ка непомирљивом супарништву, од решавања проблема ка истицању разлика и често постаје монологизовани дијалог. Рад испитује значај дијалога и монолога, полазећи од различитих аспеката дијалога, преко могућности његовог опстанка са становишта заједништва или могућег сукоба, па до интеракције као привида дијалога.

Кључне речи: дијалог, монолог, медији, комуникација, култура.

DIALOGUE AND MONOLOGUE AS COMMUNICATIONAL AND CULTURAL PHENOMENA

Abstract

Observed as a communicational and cultural phenomenon produced by the media, the dialogue as a means of mediation gets a manipulative form. Contrary to genuine dialogue as a communication model that advocates tolerance, the postmodern media dialogue ranges from the concept of unity to an irreconcilable rivalry, from resolving problems to highlighting differences, and often becomes a monologized dialogue. The paper examines the significance of dialogue and monologue, starting from various aspects of dialogue, through the possibility of its survival from the point of view of communion or potential conflict, to the interaction as the illusion of a dialogue.

Key words: dialogue, monologue, media, communication, culture.

УВОД

Лиотарово (J. F. Lyotard, 1988) дело *Постмодерно стање* покренуло је филозофске расправе о постмодерни у уметности, књижевности, архитектури, филозофији, да би дискусију са историјског, кул-

турног, естетског становишта наставили теоретичари Џејмсон (F. Jameson, 1988) и Харви (D. Harvey, 1990), који су указивали на повезаност постмодернизма са друштвено-економским односима. Заступајући филозофско становиште постмодерне, своја размишљања Лиотар, Бодријар (J. Baudrillard), Фуко (M. Foucault), Дерида /J. Derrida/ градили су на критици Хабермасовог (J. Habermas) концепта „комуникативног ума" и тежње ка консензусу кроз дијалог сматрајући да се праведност не постиже превазилажењем сукоба ради успостављања јединства, већ стварањем услова и пружањем помоћи „потиснутим странама дискурса" (Lyotard, 1988). Време постмодерне изједначава се са периодом владавине културе, о којој се највише размишља као о медијској култури која је заснована на модерној технологији и моделу масовне производње (Келнер /D. Kellner/, 2004, стр. 6). Као ствараоци и преносиоци културних садржаја, медији постмодерног друштва својом интерпретацијом догађаја доводе гледаоце у заблуду, јер им медијски конструисану истину пласирану путем телевизијске слике представљају као „чисту информацију". У друштву спектакла, „цивилизација писма" (Радојковић, Милетић, 2008, стр. 19) уступила је место „цивилизацији слике", а статус дијалога променио се у постмодерним медијима захваљујући интеракцији друштвених медија.

Ако се пође од Бодријарове теорије симулакрума, која је умногоме допринела развоју теорије постмодерне уметности, може се рећи да медији нису плодно тле на коме се правилно развија медијски дијалог; јер по теорији симулакрума, масовни медији постепено доводе до коначног уништења значења, затим процес иде ка одсликавању и маскирању стварности, па маскирању одсуства стварности, да би се дошло до нивоа медијски посредованих комуникационих облика ближих фикцији него стварности, истини (Бодријар 1991, стр. 10). Постмодерни медији који не негују културу дијалога основни су кривци кризе нарације, односно дијалога, у времену у коме је присутна „инвазија слике, и то не било какве, него слике-уверења" (Вуксановић, 2017, стр. 29). Сву пажњу медији посвећују изгледу и форми преносећи призоре који „доминирају над нарацијом" у оквиру тзв. дизајна идеологије (Harvey, 1990, p. 91), која не подразумева аутентичност, већ говори о постојању више истина и одсуству лажи у говору/дискурсу. Насупрот искреног дијалога као комуникационог модела који заговара толеранцију и разумевање, дијалог постмодерних медија креће се од концепта заједништва ка непомирљивом супарништву, од решавања проблема ка истицању разлика и често постаје монологизовани дијалог. У раду се испитује значај дијалога и монолога, полазећи од различитих аспеката дијалога, преко могућности његовог опстанка са становишта заједништва или могућег сукоба, до интеракције као привида дијалога.

ДИЈАЛОГ И МОНОЛОГ

Сваки комуникациони догађај креће се од пошиљаоца/емитера, који шаље поруку примаоцу/реципијенту о одређеној активности, до кодиране поруке, која се преноси као комплекс сигнала одређеним каналом, па се тако ствара физичка и психолошка веза између пошиљаоца и примаоца (Радојковић, Милетић, 2008, стр. 29). Полазећи од тврдње да дијалог није само разговор два саговорника било да су они у комуникативном процесу равноправни или неравноправни чиниоци, следи констатација да је дијалог целокупан изговорени текст на који утичу емоције изазване одређеном ситуацијом у којој се налазе субјекти комуникације. Њихов говор увек је упућен саговорнику без обзира на то да ли је формално остварен као монолог или дијалог, као и да ли је онај коме је информација упућена изван говорника или унутар њега самог.

Посебно повезан са уметношћу реторике, дијалог[1] је историјски посматрано присутан у класичној грчкој литератури, и то у наративно-приповедачким и филозофским формама. Насупрот позоришној терминологији, која појам дијалога препознаје и користи као облик изражавања аутора ради одређивања односа између ликова, а монолог сагледава као дијалог са одсутним или замишљеним партнером (Мукаржовски, 1981, стр. 264). Са лингвистичког полазишта, монолог[2] је језичка манифестација са једним активним учесником, а дијалог са два субјекта комуникације или више њих. Док је Мукаржовски (J. Mukařovský) инсистирао на константној борби монолога и дијалога у говору, Бахтин је (M. Bakhtin) монолошку реч окарактерисао као чисту апстракцију (Бахтин, 1980, стр. 242), Јакубински (Л. П. Якуби́нский) дијалог истицао као основни члан, а монолог као његову „вештачку" надградњу, дотле је Тард (G. Tarde) приоритет давао монологу објашњавајући то чињеницом да монолог датира из много ранијег периода него што се језик почео користити у разговору (Тард, према Мукаржовски, 1981, стр. 265–266). Тешко је поуздано утврдити ко носи приоритет, дијалог или монолог, јер се њихов однос може окарактерисати као „динамички поларитет" у коме се наизменично јављају дијалог и монолог (Мукаржовски, 1981, стр. 267). У формирању неискривљене представе о дијалогу учествују три његова основна аспекта, која се крећу од односа између „ја" и „ти", односно, смењивања улоге говорника и слушаоца. Овај аспект може се односити и на монолог у смислу остваривања дијалошког монолога, ако је ословљавањем и коришћењем личних заменица по-

[1] По грчкој речи *diá* и *logos* – моћ пролажења кроз (изворно значење), разговор (Солар, 1976, стр. 186).
[2] Према грчком *monos* (сам, један) і *logos* (reč) – (Солар, 1976, стр. 186).

себно наглашено учествовање две стране. Други ниво дијалога указује на релацију између учесника разговора и предметне ситуације; јавља се индиректно, ако постаје тема разговора, и директно, утичући на промену смера разговора у смислу мање или веће интервенције предметне ситуације или се односи на замену речи, реченице, реплике. Треће становиште третира унутрашње промене језичке манифестације које утичу на конструкције значења (Мукаржовски, 1981, стр. 268–269), јер у разговору долази до сударања контекста који се манифестује сталним смењивањем дужих и краћих реплика. Док монолог има само један непрекинути контекст, у дијалошкој манифестацији, која није могућа без значењског јединства, смењују се најмање два контекста.

У књизи *Проблем говорних жанрова* Бахтин (1980) истиче дијалогизованост као основну особину сваког говора, а Мукаржовски дијалог и монолог као два равноправна пола говора која су увек присутна у разговору и независна од самог говорника, што указује на то да се монолог у току говора може претворити у дијалог и обрнуто – комуникација може добити облик монолога, трајно или за кратак период. Учесници у дијалогу употребљавају различите функционалне језике; док један користи „емоционалан, други интелектуалан, трећи књижевни, а четврти говорни" (Мукаржовски, 1981, стр. 265); резултат тог смењивања јесу различити ефекти који се јављају у култури дијалога. И у монологу у коме је један субјект стално пасиван, такође, развија се релација говорник–саговорник, јер је субјект монолога носилац обе функције. Дијалог служи да две личности или више њих изразе различита мишљења, па се у супростављању њихових ставова гради напетост. Путем монолога један актер износи своје намере, унутрашње дилеме, сукобљава се са друштвеним нормама, износи ставове којима оправдава властите поступке или схвата самог себе (Солар, 1976, стр. 186–187).

Монолог, сагледан као дијалог са самим собом, односно са својим другим „ја" представља „дијалог остварен на једном гласу" (Мркић Поповић, 1990, стр. 11). Међутим, монолошке говорне ситуације на сцени увек треба сагледавати као говорне манифестације у којима су присутни дијалошки односи, јер иако говорник сâм казује текст, он вербално испољава два сукобљена елемента једне говорне ситуације. Дакле, у сценској интерпретацији имагинарни саговорник преузима дијалошку везу између комуникатора, који шаље поруку, и реципијента, примаоца поруке. Потенцијални саговорник, стално присутан у свести говорника који му приписује одређене особине и могуће реакције, представља основ остваривања монолога у облику дијалошког спрега са аудиторијумом. Позиција монолога и аудиторијума може се посматрати као однос два значења: монолошки цитат не одсликава само особине текста чији део представља, већ поприма

и карактеристике настале из односа говорника и имагинарног саговорника; друго становиште тог односа међузависности односи се на публику у улози имагинарног саговорника која иако не учествује вербално у комуникацији, ипак је због свог присуства, проживљавања, идентификације са комуникатором, страна у дијалогу која утиче на говорника, подстиче га да задобије и задржи њихову пажњу. То узајамно деловање говорника и саговорника указује на дијалошки спрег у монолошком казивању. У политичкој комуникацији у медијској сфери, као и у уметничком изражавању, може се догодити да монолог не оствари очекиване ефекте код публике. Разлози овакве реакције аудиторијума леже у недовољном ангажовању и недостатку сугестивне моћи говорника или у гледаоцима који нису били довољно мотивисани да узму учешће у комуникационом чину најчешће због тога што нису препознали добре намере говорника или због тога што им се нису подударила схватања истине садржане у медијској поруци. У оба случаја, монолог као дијалошки спрег није се могао остварити због неуспостављања везе замишљеног саговорника и говорника монолога. Хермансова (Hubert Hermans) концепција дијалошког бића заснива се на претпоставци да постоје три облика унутрашње дијалошке активности: монолог, који подразумева адресирање изјаве и коментаре тихом слушаоцу, затим дијалог, који је израз не само сопственог стајалишта већ и формулације одговора имагинарног саговорника, и као трећи облик, промена перспективе, што значи изналажење нове тачке гледишта (Hermans, 1996, p. 1). Он даље расправља о две основне карактеристике позиција у дијалошком смислу: о интерсубјективној комуникацији и доминацији. Са развојем нових информационо-комуникационих технологија, сагледавање овог односа може се даље пратити у контексту истраживања о повезаности монолога и низа видео-блогова који се заснивају на анализи почетних секвенци видео-блогова као облика компјутерски посредоване комуникације, што указује на нове стратегије које говорници развијају како би надокнадили недостајућег саговорника. Притом се дошло до закључка да почеци разговора не морају имати исте функције као и почеци видео-блогова, који представљају „елемент интеракције који охрабрује гледаоце да одговоре путем интерактивне функције уграђене у веб-страницу и раде на изградњи идентитета" (Frobenius, 2011).

МЕДИЈСКИ ДИЈАЛОГ – ИСТИНА И РАЗУМЕВАЊЕ

С обзиром на то да је у периоду експанзије телевизије запажена изузетна улога овог медија у формирању ставова, вредносног система, у стварању идентитета и прихватању препоручених стилова живота, ефекти медија били су тема многобројних теорија које су

указивале на лош утицај медија на масовну публику, почев од биологистичке теорије, која је истицала аутоматске ефекте штампе, затим теорије о социјалној структурисаности публике, теорије о успостављању контроле познате по Ласвеловим (H. Lasswell) питањима (5W), од којих је најважније последње „са каквим ефектом" (*what effect*), преко критичке теорије друштва, сагледавања медија кроз теорију о успостављању дневног реда, па све до теорије користи и задовољства, културолошке школе и из ње потекле идеје о друштвеном конструисању реалности. Када се сагледа организација рада професионалних комуникатора у институционализованим комуникационим центрима, онда се више не може говорити о друштвеном, већ о манипулативном обликовању реалности. С обзиром на појаву друштвених медија и интерактивног комуницирања, намеће се потреба редефинисања улоге и моћи штампе, радија и телевизије, који су слањем порука читаоцима, слушаоцима, гледаоцима доминирали у масовној комуникацији. Усамљени умрежени појединци већ данас не могу „индивидуално да контролишу реалност и стварају културу поготову када и ако 'истроше' њене наслеђене колективне тековине" (Радојковић, Ђорђевић, 2001, стр. 235). Зато се, само по себи, намеће другачије сагледавање утицаја и ефеката медија, па, самим тим, и дијалога у њима.

Иако је технолошки развој, умрежавање корисника интернета и одлазак у виртуелни комуникативни простор ради интеракције наизглед повећао могућности дијалога, чини се да никада није било мање разумевања вероватно и због тога што дијалог у медијима дели судбину времена глобалних промена које не фаворизују сличности, већ истичу разлике (Шушњић, 1997). Без обзира на то што су друштвени медији омогућили тзв. комуникациону блискост у сајбер-простору у оквиру политичке комуникације и партиципације грађана у њој, у модерној демократији и политици нема праве интеракције јавности и политичких партија. Вера у дијалог претворила се у привид о дијалогу у сфери медијске интерпретације, али и у свакодневици. Одступање од основних карактеристика дијалога као што су разумевање, веродостојност, разложност – нарочито се примећује у додиру са Другим субјектом у комуникацији са којим се сучељавају ставови у нади да ће се пронаћи заједничка истина. Сагледан из Гадамерове (Hans Georg Gadamer, 2011) перспективе, истински и отворен разговор могућ је само ако саговорници држе под контролом своје жеље и интересе и тако поштују Другог и Друго. Она страна у дијалогу која жели да успостави комуникацију заговара истините исказе и труди се да га учесник у разговору потпуно разуме; исте намере има и саговорник који пристаје на дијалог. Користећи разумевање као универзални феномен, Гадамер у својој књизи *Истине и методе* позива на дијалог и заступање демократских вредности. На разумевању међу саговорницима, пажљи-

вом слушању и посматрању инсистира и аутор дела *Dialogue – a proposal* (David Bohm, 1991, p. 22–23), сматрајући да путем дијалога настају нове вредности и нова сазнања.

Супротно разумевању на које дијалектика наводи учеснике у дијалогу, еристика само размишља о моћи дијалога при убеђивању саговорника и могућности да се буде у праву. Дијалога у политици неће бити онда када је мерило истине моћ, када политичке одлуке доноси политичка елита, када грађани постају маса, када се не поштују универзалне вредности: слобода, равноправност, солидарност... Дешава се да се сретну учесници у дијалогу који у мањој или већој мери подржавају неистину доводећи у заблуду остале учеснике у разговору. Без обзира на то да ли говоре истину или не, може се догодити да се саговорници одлуче за дијалог, али да одбијају аргументе друге стране, што доводи до опозива дијалога. На прави пут дијалог се може извести само усвајањем стандарда комуникације која заговара поштовање учесника у дискусији, пристојно изношење аргумената, говорење/слушање, као два пола вођења разговора, и придржавање етичких принципа у комуникацији.

Међутим, дијалогом може бити означен и разговор између неравноправних саговорника, и то онда када учесници у политизованом медијском дијалогу пожеле да буду у средишту медијског догађаја да би подигли углед у јавности. С друге стране, сматрајући да су супериорни у вођењу интервјуа и да могу себи да дозволе одређене дијалошке импровизације, професионални комуникатори у тренутку кад помисле да су изнад саговорника себе постављају у положај подређеног, а страх од подређене улоге изазива реакцију надређености, што директно води ка нестајању правог дијалога (Станојевић, Ђорђевић, 2017, стр. 16). Решење се назире у сталном усавршавању вештине дијалога у медијима и подизању нивоа критичке медијске писмености, јер је у свету забаве и медијског спектакла све теже утврдити границе стварности и њеног привида (Потер /J. Potter/, 2011, стр. 257). Насупрот професионалним комуникаторима, политичари, иако посебно одговорни за питање истине у политици, заузимајући надређени положај, често сматрају „да су лажи нужна и оправдана средства" (Арент, /H. Arendt/ 1994, стр. 19) у политичком дијалогу, као и у активностима везаним за вршење државничких дужности. Овакав став проистиче из опасности која прети од партијске и владине бирократије и њене тежње да најважније одлуке доноси без знања јавности и без успостављања дијалога друштвених субјеката. Свет постполитике нераскидиво је везан за медијско извештавање, право на истину, одговорност професионалних комуникатора и политичара за изговорену реч. Док се у оквиру хоризонталног нивоа односа „нове политике" и медија подстиче медијатизација, вертикална димензија усмерена је ка децентрализацији и интеракцији ради непрекидног подржавања интереса јавности.

МЕДИЈСКИ ДИЈАЛОГ – ОД КОНЦЕПТА ЗАЈЕДНИШТВА КА МОГУЋЕМ СУКОБУ

Прави ефекти медијског дијалога успостављају се онда када се њима отклањају неспоразуми и бришу разлике између саговорника (Станојевић, 2004, стр. 24), онда када нису дијалошки површни, када нису вођени ради остваривања посебних амбиција, када нема политизације и естетизације дијалога, већ у дијалошкој форми владају услови поверења и поштовања. Међутим, дијалог у медијима поприма облик средишта могућег сукоба много више него што постаје синоним за толеранцију и разумевање. Контексти дијалога обично су различити, супротни и често непомирљиви, услед чега се на рубним деловима реплика јављају преокрети у значењу порука. Живља расправа између учесника у разговору доводи до узајамног судара контекста које саговорници умеђу у тему дијалога (Gruber, 2018). Нарочито у оквиру политичке комуникације, медији се јавно залажу за дијалог надајући се да ће на основу њега привући публику (Станојевић, 2004, стр. 19), али, у ствари, избегавају дијалог, симулирају разговор, бојећи се незгодних питања и одговора који се неће уклопити у већ разрађену уредничку концепцију. Информација тада постаје привид, остаје као празна форма без потребних садржаја, и пошто није у могућности да производи смисао, „она се исцрпљује у инсценирању комуникације" и „инсценирању смисла" (Бодријар, 1991, стр. 84). Тај процес симулације најчешће је присутан у фактографским жанровима као што је интервју и „живим" емисијама у којима долази до изражаја сва расположива „уметност обмане", под изговором да је такав начин успостављања дијалога жеља аудиторијума. Привид дијалога остварује се у садржајима медијске културе у којима се тежи сензационализму ради придобијања пажње и повећања гледаности, па емисија добија карактер ток-шоу програма. Захваљујући спинованим информацијама, гледаоци су постављени у положај манипулисане публике без одговора на ретка питања која су се пробила до медијске сфере.

Због погодности виртуелне комуникације, интернета и мултимедије, дијалог на друштвеним мрежама у реалном времену (Glozer, Caruana, Hibbert, 2018), остављање коментара на изворни текст или коментара на коментар – пружили су наду у изостанак спиновања информација у оквиру осмишљавања политичких игара и афера, јер у новом комуникационом простору практично нема коначних садржаја. Иако интерактивност, као и дијалог, карактерише наизглед равноправно учествовање у двосмерној комуникацији и стална размена информација у реалном времену, идеали истине и смисла тешко се постижу и у случају интерактивног комуницирања, које у садејству са индустријом забаве, у ствари, постаје „техничким путем генерисани конструкт, односно медијским путем произведена и пласирана илузија"

(Вуксановић, 2017, стр. 31). У том контексту, субјекти интерактивног комуницирања постају субјекти привида дијалога, носиоци виртуелних идентитета, отуђени посетиоци сајбер-простора, пасивни корисници мрежне комуникације, а не слободни појединци који износе мишљења и критике и у дијалошком процесу формирају своје ставове.

У односу на умеће дијалога, у смислу могућности достизања истине, у таблоидизираном друштву слика је добила примат над наративом и постала главни „убеђивач" коме публика највише верује, па је дијалог као комуникациони и културолошки феномен остао усамљен супротстављајући се слици, мултимедији и интеракцији. У складу са напоменама културолошког приступа, за дијалог и монолог, као облике размене говорних манифестација, може се рећи да имају репрезентативну и конститутивну улогу незаменљиву у изградњи културе, што значи да представљају културолошке, а самим тим и комуникационе феномене, чиме у својим културама постају „чиниоци грађе стварности као експресивне форме" (Радојковић, Ђорђевић, 2001, стр. 230). Медијски произведен дијалог преузима различите облике: као прави, истински разговор, дијалог заговара истину, толеранцију и разумевање; у служби медијске интерпретације, у улози посредовања добија манипулативни облик; у контексту културолошко/уметничке сфере дијалог драмског текста води своје читаоце од познатих ка непознатим информацијама без намере да их дезинформише; као култура дијалога постмодерне, у своју структуру уводи елементе сценске интерпретације; дијалог постмодерних медија користећи вештину еристике и реторике политизује, естетизује и обесмишљава размену информација између субјеката комуникације; политизација дијалога узрокује стварање дијалога као места будућег сукоба, јер структура разговора под изговором демократичности и медијских слобода добија форму која фаворизује нове вредности, пре свих, политичку моћ. Тако је свет „цивилизације наратива" замењен „цивилизацијом слике", светом снова, „супермаркет културе" (Бодријар, 1991, стр. 79; Вукадиновић, 2013, стр. 12), забаве и заводљивих медијских садржаја – произвео уместо правог дијалога његов привид. Заузевши позицију дијалога у друштвеним медијима, интеракција је постала и сама привид, односно комуникација која није више посредована медијима него технологијом, што значи да је изгубила од своје друштвености.

ЗАКЉУЧНА РАЗМАТРАЊА

Савремена комуникација која се наслања на вештину дијалога, односно на уметност дискутовања насталу у култури старе Грчке, суочава се са непостојањем правог дијалога који се заснива на толеранцији и искрености. Сагледана као културни феномен, појава „губ-

љења" дијалога добија драматичне конотације с обзиром на стално истицање слободе као вредносне категорије, демократије, плурализма ставова и глобалне свеприсутности. У свету постмодерних медија и постмодерне културе која своје ослонце тражи у медијској култури (Келнер, 2004), одсуство јавне расправе, сензационални медијски садржаји, естетизација дијалога, површни разговори без аргументације из домена политичке комуникације и медијске културе – указују на непостојање медијског дијалога, јер без слободе медија у времену кризе демократије, у друштву постоји само монолог. Тамо где се дијалог слободно развија, где нема доминантног мишљења које се беспоговорно заступа, медијски дијалог промовише различита значења, дискурсе и контексте. На основу дијалошких теорија Бубера (Buber, 1977, p. 78), који ослонац своје дијалошке филозофије заснива на односу дијалога и монолога, односно узајамности појмова „ја"–„ти" и „ја"–„оно", Левинаса, чија филозофија дијалога подразумева деструкцију интенционалног модела свести помоћу дијалошког модела (Emmanuel Levinas, 2006, p. 32), и Бахтина, који сматра да реална јединица језика/говора није појединачни монолошки исказ, већ интеракција бар два исказа, тј. дијалог (Бахтин, 1980а, стр. 94–95), може се рећи да бити интеркултуралан значи бити дијалошки, славити разлику, Другост и плуралност. У противном, једнодимензионална порука указује на монолошку перспективу дијалога.

Иако многи сматрају да је и поред развоја информатичке технологије настао период сумрака демократије и дијалога (Лаш /Christopher Lasch/, 1996), што се види по глобалној, неодговорној елити, одсуству дебате и рационалних исхода политике, од дијалога не треба одустати, већ стално истицати његове предности и значај. Појмови истине, правде, слободе, разумевања, одсуство сукоба – садржани су у појму двосмерне комуникације, јер иначе постоји бојазан од опасног приближавања монолошком виду комуницирања међу људима. Док монологисти у сваком тренутку намећу своје индивидуално, некритичко резоновање симулирајући дијалог и стварајући атмосферу препирке и сукоба, учесници у дијалогу негују заједништво и отвореност, тј. „језичку могућност сусрета човека са светом" (Gadamer, 2011).

Ако се постмодерна посматра као период релативизовања вредности у смислу деконструкције свега постојећег, лако се може закључити да то доба не погодује одрживости и развоју културе дијалога која тежи истини, правди, једнакости. У тако насталом комуникационом расколу (Lyotard, 1988), деконструкција дијалошке форме за резултат има медијски посредовану комуникацију трансформисану у интерактивност. Идеал истине и дијалог који представља могућност његовог досезања узмичу пред варљивошћу сликовног убеђивања као медијског продукта, затим и пред феноменом интерак-

тивности, па интеракција као активни однос у међусобном деловању особа постаје основни смисао комуникације уместо истине и смисла порука које се преносе. Постмодерни медији заговарају масовну потрошњу и интерактивну, глобалну забаву, која представља привид размене и равноправности учесника у оквиру комуникационог чина. У демократији, плурализам и дијалог као сусрет разлика одбацују насиље и боре се за решавање спорова дијалогом, јер се промене могу остварити само у сусрету са Другим, уз поштовање онога што у том сусрету представља културне разлике. То је нарочито важно за друштва са културом у којој је монолог доминантан и у коме, чак и у ситуацијама када се, условно речено, води дијалог, саговорници не чине ништа да преузму одговорност и из монолога пређу у дијалог.

Дакле, судбина дијалога, његова улога и значај у мултимедијалној стварности зависе и данас, у време друштвених медија, као и у периоду традиционалних масовних медија, од медијски, односно технички, посредоване интерпретације реалности. У контексту постмодерног медијског тржишта, утицај дијалога на развој друштва и његову демократичност манифестује се сталном борбом за достизање истине, објективности, неговање заједништва и избегавање сукоба. У зависности од степена испуњења тих стандарда, вештина комуницирања путем дијалога уступа место монолошким формама медијског исказа. Крећући се од концепта заједништва ка непомирљивом супарништву, од решавања проблема ка истицању разлика, од консензуса до могућег сукоба, дијалог као културолошки и комуникациони феномен замењен је другим феноменом − интеракцијом која у средиште пажње поставља питање могућности опстанка медијског дијалога у друштву у коме преовладава тржишна култура и у коме се тешко достиже идеал истине и дијалога. Глобална медијска индустрија забаве произвела је нове комуникационе моделе и потребе који уместо размене идеја и смисла промовишу свет забаве, снова и интеракције у коме се размењују најчешће поруке визуелне природе, а да би се сачувао привид размене дијалог се, захваљујући постмодерним медијима, замењује интеракцијом.

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DIALOGUE AND MONOLOGUE AS COMMUNICATIONAL AND CULTURAL PHENOMENA

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Summary

The practice indicates that dialogue in the media is assuming the form of the center of a potential conflict rather than becoming a synonym for tolerance and understanding. A more intense discussion among the participants in a conversation leads to a mutual clash of the contexts which are included by the interlocutors into the subject of the dialogue. By publicly advocating a dialogue, the media hope to attract the audience, but in fact, they avoid dialogue, simulate conversation, media confrontation of the participants in communication, fearing inconvenient questions and answers that will not fit into the already elaborated editorial concept. Without having had the opportunity to access the media, the passive television audience did not particularly expect to get answers to a few questions which broke through to the media sphere. Dialogue on social networks in real time, comments on either the original text or other comments gave hope that there would be no spinning of information. The real effects of media dialogue are established when disagreements are resolved and the differences between the interlocutors are eliminated, when dialogues are not superficial, when they are not driven in order to achieve specific ambitions, when there is no politicization and aesthetization of dialogue, but the conditions of trust and respect prevail.

Although social media enabled the so-called communication closeness in cyberspace within political communication and citizen participation in it, there is no real interaction between the public and political parties in modern democracy and politics. Faith in dialogue turned into an illusion of dialogue not only in the sphere of media interpretation, but also in everyday life. Taking the position of dialogue in social media, interaction has become an illusion itself, that is, communication that is no longer mediated by the media but by technology, which means that it has lost its sociality. Hence, the fate of dialogue, its role and importance in multimedia reality depends even today, in the time of social media, as well as in the period of traditional mass media, on the media i.e. the technically mediated interpretation of reality. In the context of the postmodern media market, the influence of dialogue on the development of society and its democracy is manifested by the constant struggle for achieving truth, objectivity, fostering communion and avoiding conflict. Starting from the concept of communion to an irreconcilable rivalry, from problem solving to highlight differences, from consensus to possible conflict, dialogue as a cultural and communication phenomenon has been replaced by another phenomenon - an interaction that raises the issue of the possibility of survival of media dialogue in a society in which the market culture prevails and in which the ideal of truth and dialogue is difficult to achieve.

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BACKDOOR POLITICS: PERMITTING INFORMALITY FOR FORMAL DEVELOPMENT IN AFRICAN DEMOCRACIES

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Abstract

The backdoor politics is a general term behind the study of effective and responsible public policy from the perspective of informal political processes. The study analyses informal input determinants that affect responsible public politics. The methodology utilises data from the Afrobarometer database, assessing three countries in Africa, from the east, west and southern parts – Kenya, Nigeria and South Africa, respectively. The starting point of this methodology is that policy is responsible and effective if it integrates formal and informal decision-making processes and decision implementation.

Key words: Backdoor politics, Development, Governance, Informality, Policy, Prebendalism.

„ПОЛИТИКА У ЗАЛЕЂУ“: ДОЗВОЉАВАЊЕ НЕФОРМАЛНОСТИ ЗА ФОРМАЛНИ РАЗВОЈ У АФРИЧКОЈ ДЕМОКРАТИЈИ

Апстракт

„Политика у залеђу” је израз који означава проучавање делотворне и одговорне јавне политике са аспекта неформалних политичких процеса. Студија проучава неформалне инпут детерминанте које утичу на одговорне јавне политике. Методолошки гледано, у раду су коришћени подаци Афробарометра, који процењује три земље западне, источне и јужне Африке – Кенију, Нигерију, Јужну Африку. Основно полазиште овог истраживања јесте да су политике одговорне и делотворне ако интегришу формалне и неформалне процесе одлучивања и спровођења одлука.

Кључне речи: „политика у залеђу”, развој, управљање, неформалност, политика, предбендализам.

INTRODUCTION

All over the world, government operations are centred on the capability, effectiveness, responsiveness and efficiency of the people that constitutes it. Government cannot work effectively without human involvement in the administrative and technical decision making processes. However, humans as rational beings, are subjected to dynamic behaviour over time. Humans are subject to changes in behaviour as conditions change (Ghimire, 2018, p. 32). In decision and general policy making and analysis, it is not so easy to separate human personal egos and values from administrative due processes. In most decision making by government, there are elements of prejudice of the policy makers presumptuously coated in the will and interest of the general public – formally to ensure the greatest happiness of the greatest number of the people but informally for personal aggrandizements.

The Informalities are the other options such as shortcuts that make things such as regular policy making, analysis and implementation work faster in government and administration apart from the formal ways of regular administrative bureaucracy and rigmarole (Fox, 2018, p.16). The regular administrative bureaucracies in most cases are longer in procedure and tedious in implementation, but thorough enough to give the institution credibility and accountability. Government policies of either foreign policies or domestic policies usually take longer to be fulfilled whenever the normal due procedures are to be upheld strictly (Thrift, 2008, p. 13; Aluko 2015, p. 34). These long processes and administrative procedures are in most cases injurious to intergovernmental relations and actions that require prompt response and quick actions (Trautman 2016, p. 11; Aremu, Isiaq & Aluko 2016, p. 24). This might further lead to administrative loss of focus and delay in the process of meeting up with the target of the achievement under focuse. If more of the quick administrative actions are jeopardised by administrative oligarchy and bureaucratic rigmarole it might result in government shut down in the long run. Informal administrative procedures mostly result in checkmate to the impeding loss in the country at large.

These informalities of short circuiting long processes so as to obtain the same desired end that the long circuit might produce are termed backdoor politics in this study. Cannonand Ali, (2018, p. 2) noted that backdoor politics are measures through which policies are initiated, analysed and implemented in most countries of the world through the influence of other options other than the formal means. This is informalities in formalities. Backdoor politics is a common phenomenon among political, social and economic administrators around the world. This informal procedural politics does facilitate the normal procedures in the administrative processes so as to achieve a quick result at a record time. Although backdoor politics is informal and to some extent contrary or antithetical to

the norms and regular documentation of procedures of service, Finkeldey, (2018, p. 12) notwithstanding opined that it has brought professionalism on the formalities by it timely accomplishing the policy action implementation in public administration and governance.

These informalities (backdoor) permitted in the formalities are rampant because humans are social beings who are rational in the ways in which they obtain outcome of policy decisions. Communities around the world devise ways, the simplest and easiest ways to govern themselves so as to ensure their survival and provision of their immediate needs, as well as the needs ofthe future generations (Paiano 2008, p. 22; Tadros 2015, p. 12; Müller 2015, p. 35). Backdoor politics are no doubt present in all countries and even in the most formal procedures in both the public and private establishments. The levels of the backdoor politics may vary from one country to the other. The manner of these informalities manifesting may also vary depending on the level of the development of the country (Mustafic, 2017, p. 13). It should not be surprising to find that the level of development in a country corresponds to the volume of the informalities within formalities, short circuiting of long bureaucratic procedures and general backdoor politicking in getting formal governmental polices implemented other than the long and tedious bureaucratic rigmaroles. This implies that for governance to be responsive and prompt in action, the rate of informality approaches in the national policy making, implementing and feedbacks would be high and it would strategically be integrated into the formal policy cycle of the country.

The objective of this paper is to assess the extent to which backdoor politics exist, how it operates and propels development in Africa. Africa is selected to represent the developing democracies in the world. It is noteworthy to trace out and analyse the different levels of backdoor politicking which are identified as the informalities that emanate from both the domestic and the foreign realities. The study covers the following sections; conceptualising backdoor politics, theoretical framework using prebendal theory, the backdoor politics approach in developing countries, research methodology, presentation of data, and analysis of finding, conclusion and recommendation.

CONCEPTUALISING BACKDOOR POLITICS

Politics is multifaceted in its outlook. The term politics, according to David Easton, is the authoritative allocation of scarce values among a group of people. According to Nicollo Machiavelli, politics is any act in which the end justifies the means. Also, politics according to Harold Lasswell is about who gets what, when and how. Therefore, the act of getting things done without the stringent legal or fully documented procedures seems to be permitted for the progress of the state or the organization, and such a

phenomenon is termed backdoor politics. Sizwe opined that it is the act of making a monotonous procedure simpler ('backdooring' procedures) so as to get quick results in governance (2018, p. 12). The backdoor phenomenon is regular and active in all polities – where events are supposed to be routed through a bureaucratic channel, but diverted to a fast lane due to the urgency and the level of influence mounted by some group of people to facilitate the processes (Muga, 2017, p. 32). Backdoor procedures are only virtual or quasi procedures, but not the actual procedures with the documented legal modus operandi in an organised setting (Zankina, 2017, p. 2). However, Aluko (2016a, p. 12) and Waikenda (2017, p. 2) opined that the regular outcome in backdoor politics is usually the same with the outcome of the actual procedures (the due process).

In fact, backdoor procedures are usually faster than the bureaucratic legal procedure in the organised settings such as government establishments and other private firms which make use of long and often cumbersome administrative procedures (Falkner, Hartlapp, Leiber & Treib, 2002, p. 33). The politics of 'who gets what, when and how' is conditioned by who you know, where, when and how. This politics, to a great extent, conditions the procedures in public or private firms. Its adverse effects, if it is not properly managed, will results in favouritism, men-pleaser services, nepotism, bribery and other forms of corruption in the long run. This might imply a non-professional act by the administrators, but it simply confirms that the end justifies the means and all men have various levels of influence in society (Aluko, 2017, p. 2; Zankina, 2017, p. 2).

The non-equivocal availability and accessibility of men to some extent beyond the limit of proportionality gives room for informalities among the comity of friends and states in the wider view. Muga noted that informalities avert the formal approach and gets things done in a more relax atmosphere where the procedures are under fetters (2017, p. 4). This backdoor approach in politics often starts from the influence of the kitchen cabinet of the decision maker which comprises of the wife and immediate family members to his inner caucus of friends (business or administrative friends), and results in the pressure from government top political officials either within the state or outside.

The informalities in the formality depict backdoor politics processes of every policy formulated from its initiation to its implementation and feedback stage in the government which are short circuited by passing through an abridge process instead of the normal policy cycle. These informalities are seen as norms for the progress of a business or a country, and for the greatest happiness of the greatest number of people in the country at large. These informalities in official procedures, simply called backdoor politics in this study, encourage more effective and rapid outputs in the governmental bureaucratic procedures by creating a quasi-official route for the administrative processes and procedures.

THEORETICAL FRAMEWORK

Prebendal Theory

Prebendalism refers to the act of getting things done in an informal approach. This approach may be legal with due processes outlined and followed, or illegal without the full adherence to the procedures of the due process. The theory is credited to Joseph Richard (1996). The theory depicts short circuiting the politics of policy formulation in governance and administration so as to get a desirable end within a short time. On the other hand, it is where cronies or members of an ethnic group are compensated whenever an individual from the group acquires political power. It is also where a public office or policy is used to hasten or shorten a political due process as a means to achieve a desired goal. This act is termed as prebendal act. In some cases, the prebends appropriated by the office holder are used to generate material benefits for themselves, their constituents and kin groups (Joseph, 1996, p. 2).

Prebendalism explains how the nature of politics and the role of the ruling elites contribute to the means of governance and development. It also explains the problem of state centred corruption in many developed and developing countries (Ogundiya, 2009, p. 12). Prebendalism is the phenomenon whereby public offices are regarded as the opportunity to make impact in the development of the state in a short period of time. This entails the partial or total suspension of the due process in the policy formulation, implementation and impact assessment. It may also affect the accountability of the political system.

In extreme cases, Wilson and Magam opined that the prebendal nature of backdoor politics is fundamental to the problem of political corruption (2018, p. 6). The impact might bring prompt or rapid short-term development, but with little accountability (Nye, 1967, p. 2). Prebendal politics in governance and administrative process does not mean that there will be no accountability in the process of governance and administration, but the extent of its operation might be low. However, it has the potential of speedy executive approval of public policy or project and its implementation or prompt completion to the benefit of the greatest number of the population.

The mechanism of operation of prebendalism in backdoor politics does not affect the critical democratic values, such as respect for the fundamental human rights of citizens, the constitution and rule of law, institutional autonomy and accountability. It does not affect the freedom, credible and competitive elections, strong and vibrant civil society and opposition political parties. It may subvert some of the principles by government initiating an expediting action so as to salvage a major political or socioeconomic damage or challenge. Backdoor politics help the government to prebend an action which should have taken a longer natural

course to become shorter and faster so as to assist the government to meet up the time lag and the specific developmental targets.

Prebendalism, as a negative trend, deepens the connection between corruption and class formation (Bond, 2009, p. 22). The relationship between prebendal politics, the role of the ruling elites in widespread corruption and the damaging effects on development, democratic values and processes in the any country may be widened if accountability is totally suspended in the governance and the administrative operations. In such cases, there will be a high rate of allegations against political leaders on issues such as bribery, nepotism, cronyism and award of spurious contracts, inflation of contract sums, embezzlement and misappropriation of public funds, electoral fraud and abuse of office (Nye, 1967, p. 2). The continuity of this negative trend and practice has a high tendency of resulting into an increase in poverty levels, inequality, unemployment, -security issues, political instability, and infrastructural decay.

The phenomenon of prebendal politics, which corroborates backdoor politics, truly manifests in developing democracies due to the high rate of developmental lag or the developmental debt accumulated over time (Omodia & Aliu, 2013, p. 10). Moreover, in the developed democracies, such acts exist at lower ebb which is more controllable by institutional mechanisms unlike the developing democracies that may lack strong institutions to curtail the excesses of backdoor politic and prebendal activities (Bond, 2009, p. 2).

Whenever prebendal activities of the government positively influence the political and socioeconomic development in the country, there will be prompt government actions that will hasten development and the distribution of the economic resources to all and sundry without any major bureaucratic rigmaroles and the concentration on cronies as the sole beneficiaries (Hornberger, 2018, p. 3). Equally, political appointments, contracts, promotions, jobs, cash transfer, and other state resources will be deployed to sustain the network of political and economic relationship, maintain political support and patronage, promote shared prosperity and enhance growth and development of both rural and urban centres (Joseph, 1996, p. 2; Omodia & Aliu, 2013, p. 13).

Backdoor Politics Approach in developing Countries

The backdoor politics approaches and patterns of occurrence in the developing economies are numerous. This will be discussed in the four facets of their operations and influences. These include: the political approach, the economic approach, the ethnic approach and the religious approach. The political approach to backdoor politics in the developing countries involves the government officials' involvement in the politicking by bypassing government bureaucratic procedures. The recruitments of staffs are done from the informal procedure from the corridor of political

power, influence and authority instead of merit, and formal bureaucratic procedures legally backed by the state law.

The recruitments done through informal–backdoor politics will always give room for more compromise in favour of the person that gave them the job offer or opportunity informally, which, in this case, is the political office holder. Whenever the political office holder need to pass through the legal rational bureaucratic procedure of the office, his beneficiaries and cronies will backdoor the process so as to get his requests with rapt attention and without much stress (Westra, 2014, p. 12; Bachmann, 2016, p. 2). Hope opined that if this is not well curtailed with regular accountability, it will exert some negative effects on the day to day running of the office and the entire democratic development of the state at large (2018, p. 11).

The economic approach to backdoor politics in the developing countries involves the illegal flow of financial largess within the government to buy off official protocols out of the way for the informal processes (Aluko, 2017, p. 7; Hope, 2018, p. 11). This, in most cases, is referred to as bribery and misappropriation of funds. Hornberger'sanalysis concluded that the financial largess might not be to bend the procedure of operations in the state, but to compensate the officers on duty for the fast tracking and unofficially handling of the official procedures. In other words, the issue of *quid pro quo* is a form of backdoor politics of the economic approach (Duster, 2004, p. 6; Aluko, 2016b, p. 12). It implies that you give something to get something in return.

Realists and moralists see this as antithetical to development and sustainability of official state procedures, but the idealist and the amoral sees it as a means to an end which might benefit the whole state in the long run (Gounev, 2011, p. 2). Economic approaches revealed that money politics represent a way in which a government official may be tipped away from his official duty so as to boycott certain long procedures in favour of the person who needs to get the advantage. If the event is for the public good, the process short circuiting it financially would propel the early manifestation of the good. However, this must be monitored so as to obtain the prompt delivery of the good.

The ethnic approach to backdoor politics in the developing countries centres on the interest of an ethnic group at the expense of the others. Miller remarked that the quest for prosperity of social groups propels backdoor approaches to political power (2018, p. 3). Therefore, the ethnic approach to backdoor politics in the developing economies involves the giving of sentimental prejudice to issues or policies that torch the policy maker's close relative, family and personal life. This, therefore, allows more soft torches to be given to such issues or policies while other policiesreceive the total official attention without any iota of informalities.

The backdoor politics of favouritism and ethnic affinity prejudice centres on a given group of people, more public goods in their geographical location in terms of public projects contracting and execution, and the softening of the bureaucratic process to aid an ethnic affinity, or in favour of one ethnic group rather than another. Ho and Chua posited that this approach usually promotes divisions, personal prejudice, egocentrism, nepotism and sentimental prowess across (2015, p. 2). If it is not properly handled, it could lead to social mishaps such as ethnic dominance, ethnic superiority riots and violence.

This religious approach has a link with the ethnic approach to backdoor politics in the developing countries. This involves the showing of more favour to a particular religious group while others are neglected. It also involves the neglect of most or few public procedures or due process due to the religious affinity of the benefactors. This issue, in most cases, if not properly handled, leads to religious bigotry and chauvinism. The positive effect is that it reduces the poverty level in the country because the beneficial religious group might be from various ethnic groups (USAID, 2006). Therefore, rapid development will circulate the country and more people that are affiliated with the religious group will also enjoy state informalities.

All of these approaches to backdoor politics in the developing countries have some element of progress and development inference on the governmental achievements. In some cases it has led to the criticism of the government. Excessive bureaucratic procedures slow down governmental actions especially when urgent questions need answering and pressing problems require solutions. The level of informalities therefore in the formal procedures, if duly utilized, will enhance progress in the country if accountability is not totally negotiated in the process. The manifestations of the approaches should as well be censored so as to get a rapid and popular response from the general populace when it is going badly.

METHODOLOGY

The research objective of this study is to assess the extent to which backdoor politics exist, how it operates and propels development in Africa. The Afrobarometer time series online data presentshow different groups and government officials influence politics and governance through informalities and backdoor politics in three countries in Africa. The countries are randomly selected from east, west and southern Africa respectively. These countries are: Kenya, Nigeria and South Africa respectively. Descriptive analyses with the use of simple percentage and bar charts are employed.

Some indicators of the presence of backdoor politics are selected to measure the extent to which informalities and backdoor politics operations affect policies and propel development in Africa. Such indicators include; ethnic group's political influence on the government policies, how often officials go unpunished or accountability, the extent of the traditional

leaders' influence on the governing of local community, the influence of civic organizations and non-governmental organizations (NGO) on policies and development, the influence of international businesses and investors on getting things done through the backdoor rather than the formal procedures in the government.

THE PRESENTATION OF DATA AND THE ANALYSIS

This section of the paper presents data on the reality of backdoor politics' informal influence on the country and the policy makers in Africa by state and non-state actors. Descriptive analyses with the use of bar charts are employed. The following actors' influences are considered; ethnic groups, government officials, traditional rulers, civic organizations, international business investors and international donor and nongovernmental organization (NGO) are taken into consideration in this study.

Table 1. Ethnic group's political influence

	Kenya	Nigeria	South Africa
Ethnic group's political influence	R4 2008/2009	R4 2008/2009	R4 2008/2009
Much more	8	11	6
More	16	19	10
Same	36	38	41
Less	25	22	13
Much less	13	6	7

Source: Afrobarometer (2017) www.afrobarometer.org

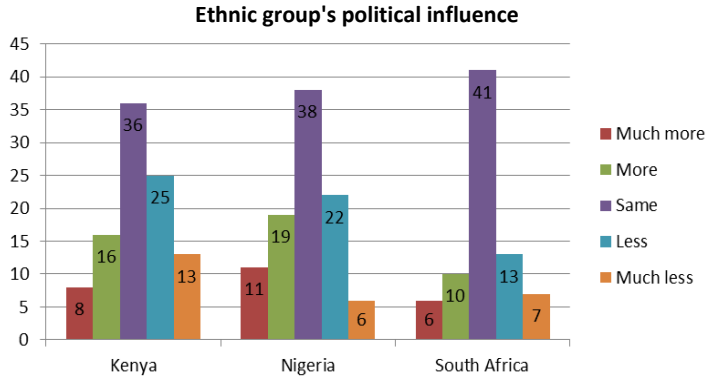

Figure 1. Ethnic group's political influence

Table 1 and Figure 2 above present data on ethnic groups' political influence on the country in Africa. The data presented comparatively considered three countries in Africa which include Kenya, Nigeria and South Africa, which are randomly selected for the study in Africa.

Table 2. How often officials unpunished

How often officials unpunished	Kenya R6 2013/2014	Nigeria R6 2013/2014	South Africa R5 2011/2012
Never	7	11	19
Rarely	13	19	23
Often	37	33	38
Always	39	35	18
Don't know	4	2	2

Source: Afrobarometer (2017)

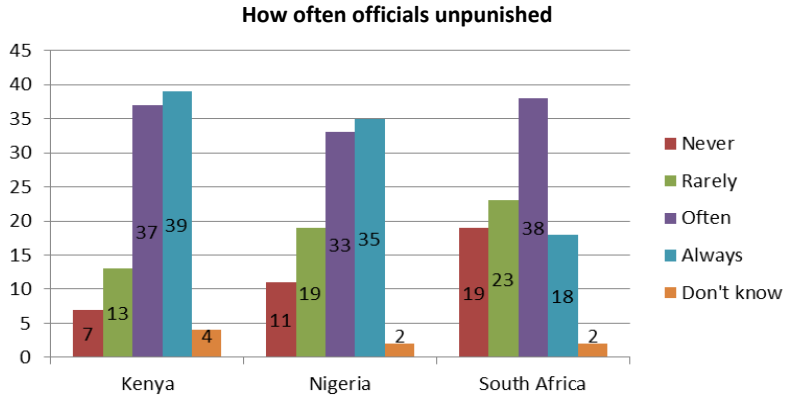

Figure 2. How often officials unpunished

Table 2 and Figure II2 above present data on how often officials of the state go unpunished due to their backdoor politics and influence on the policy and decision makers.

The data presented comparatively considered three countries in Africa which include Kenya, Nigeria and South Africa, which are randomly selected for the study in Africa.

Table 3. Traditional leaders influence governing local community

Traditional leaders influence governing local community	Kenya	Nigeria	South Africa
None	12.9	8.8	25.9
A small amount	30.6	30.8	22.1
Some	28	31.3	22.2
A great deal	18.1	19	9.8
Don't know	10.4	10.1	20

Source: Afrobarometer (2017)

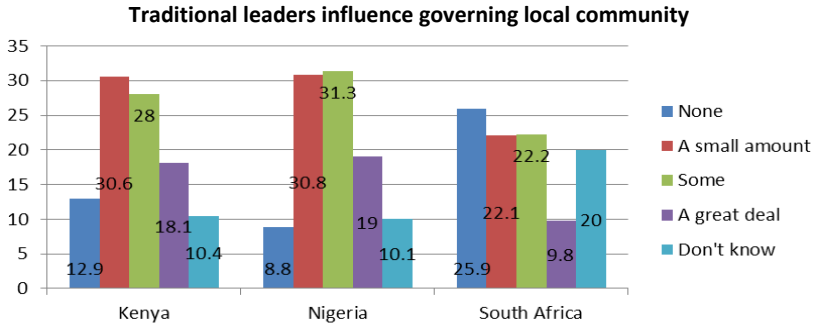

Figure 3. Traditional leaders influence governing local community

Table 3 and Figure 3 above present data on traditional leaders' influence in governing the local community policy and the decision making process. It is important to note that the local jcommunity is either rural or urban, which the traditional leaders control within the ambient of the state law. The data presented comparatively considered three countries in Africa which include Kenya, Nigeria and South Africa, which are randomly selected for the study in Africa.

Table 4. Influence of civic organizations and NGOs

Influence of civic organizations and NGOs	Kenya	Nigeria	South Africa
	R4 2008/2009	R4 2008/2009	R4 2008/2009
Far too little	8	10	13
Somewhat too little	16	20	16
About the right amount	26	24	20
Somewhat too much	14	12	13
Far too much	8	3	7
Don't know	26	32	31

Source: Afrobarometer (2017)

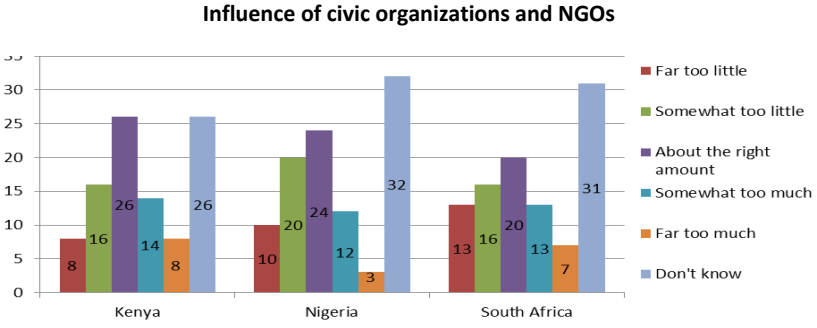

Figure 4. Influence of civic organizations and NGOs

Table 4 and Figure 4 above present data on the influence of civic organizations and nongovernmental organizations (NGOs) on policy and the decision making process in the country. The data presented comparatively considered three countries in Africa, which include Kenya, Nigeria and South Africa which are randomly selected for the study in Africa.

Table 5. Influence of international businesses and investors

Influence of international businesses and investors	Kenya R4 2008/2009	Nigeria R4 2008/2009	South Africa R4 2008/2009
Far too little	8	8	12
Somewhat too little	17	21	15
About the right amount	25	23	23
Somewhat too much	13	11	13
Far too much	6	4	7
Don't know	1	32	30

Source: Afrobarometer (2017)

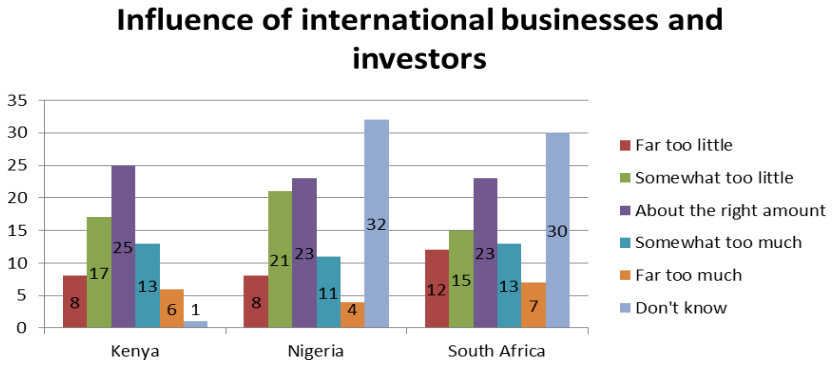

Figure 5. Influence of international businesses and investors

Table 5 and Figure 5 above present data on the influence of international businesses and investors on policy and the decision making process in the country. The data presented comparatively considered three countries in Africa which include Kenya, Nigeria and South Africa, which are randomly selected for the study in Africa.

ANALYSIS OF FINDINGS

From Table 1 and Figure 2 above, about twenty four percent (24%) of Kenyans believe that ethnic groups have significant political influence on the country (a combination of much more and more). Thirtysix percent (36%) of the populace opine that ethnic groups have the same level of

influence on the country as do other state or non-state groups, while thirty eight percent (38%) perceive that ethnic groups in Kenya have less significant political influence on the country (a combination of less and much less). This corroborates what Hanson (2008, p. 2) and Muga's (2017, p. 7) claim that the ethnic groups in Kenya have some level of significant impact on the policy makers on both formal and backdoor informal politics levels.

Similarly to Kenya, about thirty percent (30%) of Nigerians believe that ethnic groups have a significant political influence on the country (a combination of much more and more). Thirty eight percent (38%) of the populace opines that ethnic groups have the same level of influence on the country as the other state or non-state groups, while twenty eight percent (28%) perceive that ethnic groups in Nigeria have less significant political influence on the country (a combination of less and much less). With regard to this, Okeke claims that the ethnic groups in Nigeria have a significant level of impact on the policy makers on both formal and the backdoor politics informal levels (2017, p. 5).

Unlike Nigeria, in the Republic of South Africa, about sixteen percent (16%) of South Africans believe that ethnic groups have a significant political influence on the country (a combination of much more and more). Forty one percent (41%) of the populace opines that ethnic groups have the same level of influence on the country as the other state or non-state groups, while twenty percent (20%) perceive that ethnic groups in Nigeria have a less significant political influence on the country (a combination of less and much less). This implies that the ethnic groups in South Africa have a less significant level of impact on the policy makers on both formal and backdoor politics informal levels (Hunter, 2007, p. 14). Bond on the other hand, argues that some ethnic groups in certain parts of the country have more influence on politics than the other (2009, p. 2).

From Table 2 and Figure 2 above, about seven percent (7%) of Kenyans opine that officials of the state never go unpunished regardless of their status, while thirteen percent (13%) perceive that they rarely go unpunished. However, thirty seven percent (37%) and thirty nine percent (39%), which is a significant percentage, perceive that officials of the state often and always go unpunished, respectively. These findings support what Waikenda (2017, p. 5) and Hope (2018, p. 7) deduced, that the political officials in Kenya have a high level of significant impact on the policy makers on both the formal level and the backdoor politics, informal order, and that they often go unpunished.

Similarly to the backdoor influence of public officials in Kenya, Table II and Figure II above reveal that about eleven percent (11%) of Nigerians think that officials of the state never go unpunished regardless of their status while nineteen percent (19%) perceive that they rarely go unpunished. However, thirty three percent (33%) and thirty five percent

(35%),which is a significant percentage, perceive that officials of the state often and always go unpunished, respectively. This implies that the findings of Ejimabo (2013, p. 6), that the public officials in Nigeria have significant impact on the policy makers using the informal order of backdoor politics, is sacrosanct.

From Table 2 and Figure 2 above, the influence of public officials in South Africa is significant. About nineteen percent (19%) of South Africans think that officials of the state never go unpunished regardless of their status, while twenty three percent (23%) perceive that they rarely go unpunished. However, thirty eight percent (38%) and eighteen percent (18%), which is a less significant percentage, perceive that officials of the state often and always go unpunished, respectively. This justifies Oldfield and Greyling's (2015, p. 6) claim that the officials of the state in South Africa a have high level of significant impact of backdoor politics influence on the policy makers. This, in their opinion, hastens development in the governance process.

From Table 3 and Figure 3 above, about thirteen percent (13%) of Kenyans perceive that the traditional leaders have no influence in the local community policy, governance, development and the decision making processes. About thirty one percent (31%), however, think that they have a small amount of influence of both formal and informal approaches in the governing of the local community policy and the decision making processes. Also, forty six percent (46%) display a combination of attitudes reflecting a perception that the traditional leaders have significant influence in the governing of the local community policy and the decision making processes. This finding is generally supported in the literature which upholds that the traditional leaders have a significant level of influence on the country from both the formal and the informal (backdoor politics) levels in Kenya (Makora, 2012, p. 4; Michira, 2018, p. 12).

However, similarly to the data about Kenya, a less significant percentage, about eight percent (8%), of Nigerians perceive that the traditional leaders have no influence in governing the local community policy and the decision making processes. About thirty one percent (31%) think that they have little influence on both the formal and informal (backdoor politics) forms in governing the local community policy and the decision making processes. Also, twenty nine percent (29%) of the people claim that the traditional leaders have a very significant level of influence in the policy making, governance and development of the local community and general decision making processes. This corroborates Ejimabo's (2013, p. 21) opinion that the traditional leaders have a significant level of impact on the country by utilising both the formal and the informal (backdoor politics) channels of governance and decision making in Nigeria.

Unlike Kenya and Nigeria, about twenty six percent (26%) of South Africans perceive that the traditional leaders have no influence in

governing the local community policy and the decision making processes. About twenty two percent (22%) however think that they have a small amount of influence on both the formal and informal (backdoor politics) channels in the governance and the decision making processes of the local community. Also, thirty two percent (32%) remarked that the traditional leaders have a very significant level of influence in the governing and the decision making processes in the local community. This substantiates the opinions of Hunter (2007, p. 12) and Sizwe (2018, p. 13) that the traditional leaders have a minimal level of impact on the country from both the formal and the informal (backdoor politics) levels in South Africa.

Table 4 and Figure 4 abovereveal that about twenty four percent (24%) of Kenyans noted that the level of influence of civic organizations and nongovernmental organizations (NGOs) on policy and the decision making process in the country is fairly insignificant (a combination of far too little and somewhat too little). However, another twenty six percent (26%) perceived that they have a fair level of influence on the country utilising both formal and the informal approaches. About twenty two percent (22%) show attitude of a combination of 'somewhat too much' and 'far too much', and think that the level of influence of civic organizations and nongovernmental organizations (NGOs) on policy and the decision making process in the country is very significant. Considering the level of fairly and strongly significant, it is important to remark that this justifies Hope's view (2018. P. 14) that the impact of the civic organizations and nongovernmental organizations (NGOs) on policy and the decision making process in the Kenya is very significant.

In Nigeria however, Table 4 and Figure 4 above show that about thirty percent (30%) opine that the level of influence of civic organizations and nongovernmental organizations (NGOs) on policy and the decision making process in the country is minimal (a combination of 'far too little' and 'somewhat too little'). However, another twenty four percent (24%) perceive that they have fairly significant influence on the country using both formal and the informal mediums. Also about fifteen percent (15%) show attitude that is a combination of 'somewhat too much' and 'far too much' claiming that the level of influence of civic organizations and nongovernmental organizations (NGOs) on policy and the decision making process in the country is very significant. Ejimabo (2013, p. 11) supports the claim that the impact of the civic organizations and nongovernmental organizations (NGOs) on policy and the decision making process in Nigeria is very significant.

Table 4 and Figure 4 above show that in South Africa, about twenty nine percent (29%) think that the level of influence of civic organizations and nongovernmental organizations (NGOs) on policy and the decision making process in the country is too little (a combination of 'far too little' and 'somewhat too little'). However, another twenty percent (20%) perceived it

as a fairly significant influence on the country. Also about twenty percent (20%) see it as a combination of 'somewhat too much' and 'far too much' therefore claiming that the level of influence of civic organizations and nongovernmental organizations (NGOs) on policy and the decision making process in the country is very significant. Considering Edwards (2014, p. 9) and Sizwe's (2018, p. 14) remarks on the informalities in civic organizations and nongovernmental organizations (NGOs) on policy and the decision making processes and operations, it is important to emphasize that the impact of the civic organizations and nongovernmental organizations (NGOs) on policy and the decision making process in the South Africa is very significant.

From Table 5 and Figure 5 above, it is observed that about twenty five percent (25%) of Kenyans think that the (formal and informal) influences of international businesses and investors on policy and the decision making process in the country is insignificant (a combination of 'far too little' and 'somewhat too little'). However, about twenty five percent (25%) also perceive that the international businesses and investors have a less significant influence on the policy and the decision making process in the country. Also about nineteen percent (19%) of the populace (a combination of 'somewhat too much' and 'far too much') are of the opinion that the influence of international businesses and investors on policy and the decision making process in the country, either through the formal means or the informal backdoor politics, is very significant. Miller (2018, p. 12) supports the position that prosperity in Kenya is not evenly circulated due to the reduced influence of international businesses and investors on policy and the decision making process in the country.

In Nigeria, much like in Kenya, Table 5 and Figure 5 above reveal that about twenty nine percent (29%) of Nigerians think that the influence of international businesses and investors on policy and the decision making process in the country is not significant (a combination of 'far too little' and 'somewhat too little'). However, about twenty three percent (23%) also perceive that the international businesses and investors' influence on the policy and the decision making process in the country is fairly significant. Also about nineteen percent (19%) of the populace (a combination of 'somewhat too much' and 'far too much') are of the opinion that the influence of international businesses and investors on policy and the decision making process in the country, either through the formal means or the informal backdoor politics, is very significant. Okeke (2017, p. 13) remarks that the level of development in Nigeria is slow due to the low influences exhibited by international businesses and investors on policy and the decision making process in the country.

Table 5 and Figure 5 above reveal that the perceived phenomenon in South Africa is similar to those in Nigeria and Kenya. About twenty nine percent (27%) of South Africans think that the influence of international

businesses and investors on policy and the decision making process in the country is too insignificant (a combination of 'far too little' and 'somewhat too little'). However, about twenty three percent (23%) also perceive that the international businesses and investors have about the right amount of influence on the policy and the decision making process in the country. Also, about twenty percent (20%) of the populace (a combination of 'somewhat too much' and 'far too much') are of the opinion that the influence of international businesses and investors on policy and the decision making process in the country, either through the formal means or the informal backdoor politics, is very significant. This substantiates Oldfield and Greyling's assertion (2015, p. 8) that informalities of international businesses and investors have little effect on the entire country.

CONCLUSION AND RECOMMENDATION

Backdoor politics have affected policies and development in Africa in both positive and negative ways. This study analyzes the reality of informalities in the day to day government bureaucratic procedures. The comparative analyses of three African states employs the use of descriptive analyses and the simple percentage presented in tables and bar charts . The mentioned African states include Kenya, Nigeria and South Africa. The analysis reveals that informalities and backdoor politics exist in government and policy making processes in Africa. The level of impact of informalities and backdoor politics in these African country is very high and has significant impact.

It is important to note that the social group leaders, private sector and government officials, embark on backdoor approach in getting things done in the government circuit. However, their level of influence varies from country to country. The rationale behind the informal approach to government is to enhance quick development, prevent delays and other long administrative rigmarole. Wherever there is human interaction, especially in developing democracies there are the tendencies that the personal handling of the affairs, even public affairs, might permit some informality in the formal administrative bureaucratic procedures due to certain exigencies or personal idiosyncrasies.

The analysis of backdoor politics reveals that there are four basic perspectives or approaches through which informality operates or creeps into the political system. These approaches include the political approach, the economic approach, the ethnic approach and the religious approach. Backdoor politics might prevent adequate accountability, but it could also enhance rapid response to germane issues in the country if judiciously employed. No doubt, due process is the best mode of operation in governance and administrative procedures, but with that, there is the risk that the due process might be short-circuited for a prompt response and the public needs to be achieved.

The major setback to the prowess of backdoor politics is when it goes to the extreme, as prebendal theory explains it. The traits of corruption and egocentric political drives will begin to manifest. The wealth of the country at this moment will be circumvent by a few people and there will be a wide spread of poverty and uneven development in the country. Therefore, it is important to be able to determine the situations in which personal prejudice is introduced or lobbied into a public project so as to be able to monitor it against excesses. On the short run, backdoor politics is profitable for good governance and accelerated development if the extent of accountability in the process is high.

Permitting backdoor politics and informalities in formal governance aids governance speed and closeness of public largess and goods to the general public. Formalities breeds+ time wasting, corruption, bribery and delay in execution of urgent projects. Government officials must be aware that speeding up a due process is a form of backdoor politics which can aid administrative responsiveness to the demand of the people, effectiveness in policy execution and the personnel output level will become more efficient. Therefore, due process can be maintained side by side with backdoor politics but with a high level of accountability.

It is of noteworthy to recommend that permitting the normal course of actions or due process to take its course when issues are linked to the common man, and this is inevitable in governmental and nongovernmental sectors of the state. However, the extent of permitting interference or backdoor politics in the policy and decision making process of the government must be censored in the light of public opinion and accountability. The government in a democratic setting should endeavour to allow the input of the greatest number of the people before a policy should be implemented, despite the possible urgency. This popular opinion will neutralise the negative effects of backdoor politics in the state. Nevertheless, boundaries should be drawn between a potentially egocentric and state-centric agendas so as to prevent political sabotage, prejudice and corruption in the country.

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„ПОЛИТИКА У ЗАЛЕЂУ“: ДОЗВОЉАВАЊЕ НЕФОРМАЛНОСТИ ЗА ФОРМАЛНИ РАЗВОЈ У АФРИЧКОЈ ДЕМОКРАТИЈИ

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Резиме

Влада своје деловање усмерава на способност, ефикасност, одрживост и ефективност. Влада не може ефикасно одлучивати без укључивања људи приликом доношења одлука. Постоје предрасуде да доносиоци одлука полазе од воље и интереса шире јавности упркос чињеници да је формални циљ уважавање интереса и потреба што већег броја људи. Доношење одлука подразумева и неформалне процесе који се одређују као друга опција, као што су пречице које чине да се доношење одлука спроводи брже у администрацији и управи. Редовне процедуре су, у већини случајева, дуже и спорије и довољно утемељене на институционалним процедурама, које дају кредибилитет и одговорност.

„Политика у залеђу” је израз који означава проучавање делотворне и одговорне јавне политике са аспекта неформалних политичких процеса. Студија је усмерена на сагледавање питања како неформални процеси утичу на брзину доношење одлука у администрацији и управи. Методологија истраживања заснована је на подацима базе података „Афробарометра”, на основу којих се процењује у којикој мери „политика у залеђу” постоји, како делује и подстиче развој у три земље западне, источне и јужне Африке – Кеније, Нигерије, Јужне Африке. Истраживања су у раду показала да је утицај неформалних процеса и „политике у залеђу” на политику и развој демократије у анализираним земљама висок, што захтева одговарајуће реаговање. Предлаже се да утицај „политике у залеђу” у процесу доношења одлука мора бити контролисан и вођен јавним мишљењем и одговорношћу. Демократско окружење захтева од једне владе да процес доношења одлука буде у функцији што већег броја људи без обзира на њихову хитност и тражену брзину. На овај начин ће се неутрализовати негативни ефекти „политике у залеђу” у једној држави.

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СПРЕМНОСТ ДЕТЕТА ЗА ШКОЛУ: ЗНАЧАЈ СПРЕМНОСТИ И ИНТЕРАКЦИЈЕ МИКРОСИСТЕМСКИХ РАЗВОЈНИХ ОКРУЖЕЊА [a]

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Апстракт

Полазак у основну школу значајан је корак на образовној лествици сваког детета, а резултат адекватне спремности за школу очитује се кроз дететов осећај припадности школској заједници и мотивације за остваривање школског успеха. С обзиром на различите индивидуалне карактеристике сваког детета, с једне стране, и на нова и другачија искуства која доноси полазак у школу, с друге стране, намеће се потреба преиспитивања фактора који обликују спремност детета за школу. Полазећи од кратког осврта на приступе који сагледавају феномен спремности за школу, основу рада чини интеракционистички приступ који, поред значаја индивидуалних карактеристика детета, наглашава и значај услова микросистемских развојних окружења у којима дете обитава, те важност њиховог синергијског деловања. У том смислу, а водећи се савременом конструкцијом појма „спремности за школу", фокус рада стављен је на сагледавање обележја породичног и институционалног (предшколског и школског) контекста, као и контекста заједнице, те на могућности удруженог деловања развојних окружења кроз примере добре праксе у нашем образовном контексту. Закључује се да, иако сваки од поменутих микросистемских окружења појединачно доприносе дететовој спремности за школу, најбољи ефекти се постижу кроз њихову интеракцију која доводи до континуитета утицаја и максималног остварења дететових потенцијала у новом образовном окружењу.

Кључне речи: спремност за школу, дете, породица, институције организованог васпитања и образовања, заједница.

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CHILDREN'S SCHOOL READINESS: THE IMPORTANCE OF READINESS AND THE INTERACTION IN THE MICROSYSTEMS OF THE DEVELOPMENT ENVIRONMENTS

Abstract

Starting elementary school is an important step on the education ladder of every child, and the result of adequate school readiness is reflected in the child's feeling of belonging to the school community and the motivation for accomplishing school success. Bearing in mind, on the one hand, different individual characteristics of every child, and, on the other, new and different experiences when starting school, there is a tendency to re-examine the factors shaping (and influencing) the child's readiness for school. Starting from a brief retrospect of the approaches that review the phenomenon of school readiness, the essence of this paper consists of an interactive approach which, beside the importance of individual children's characteristics, also emphasizes the significance of conditions in the microsystem of the development environments in which the child spends their time, as well as their synergistic actions. In this manner, while following the contemporary construction of the term "school readiness," the focus of this paper is set on the review of the hallmarks in family and institution (pre-school and school) context, as well as in the community context, and the possibility of a joint action of the development environments through examples of good practice in our educational context. Although each of these mentioned microsystem environments individually contributes to children's school readiness, it can be concluded that the best effects are accomplished through their interaction which leads to the continuity of influence and the maximum of reaching children's potentials in new education environment.

Key words: school readiness, child, family, institutions of organized education, community.

УВОД

Поласком у школу започиње нова етапа у развоју детета, при чему нова улога детета као ученика првог разреда носи са собом широк дијапазон различитих промена и захтева у сваком погледу. Поседовање појединих академских способности, праћење упутстава од стране одраслих, добро успостављени вршњачки односи, испољавање позитивних емоција – представљају неке од индикатора спремности детета за школу. Међутим, чињеница да нису сва деца подједнако и адекватно припремљена за ново образовно, тј. школско, окружење намеће потребу за континуираним преиспитивањем фактора који обликују спремност детета за школу, а што уједно актуализује и питање конструкције и тумачења самог појма „спремност за школу".

Прегледом литературе (Čudina-Obradović, 2008; Dockett & Perry, 2007; High, 2008; Klemenović, 2014; Meisels, 1998) могуће је уочити да тумачење термина „спремност за школу" има корене у различитим теоријским концепцијама, на основу којих су развијени приступи у његовом појмовном одређењу. *Нативистичко-идеали-*

стички приступ, ослањајући се на теорију матурационисте, наглашава утицај биологије на спремност за школу, при чему се развој детета посматра у светлу деловања унутрашњег сата који оно поседује. Дакле, критеријум који одређује дететову подобност да похађа школу јесте његов узраст. С друге стране, *срединско-емпиристички приступ* спремност за школу посматра кроз спољашње доказе учења, попут познавања боја, облика, бројева, слова, при чему до изражаја долази значај непосредне укључености одраслих из породице или вртића, као и важност уношења школског садржаја у предшколско учење. За разлику од поменутих идеја нативиста и емпириста, *социоконструктивистички приступ* помера фокус са процене детета на заједницу у којој дете живи. Овај приступ спремност за школу сагледава као уграђену унутар социјалног и културног миљеа детета, односно као стварање низа идеја или значења насталих током учешћа детета у различитим развојним окружењима. Међутим, спремност за школу се у овом случају везује за одређени контекст и има значење само у том контексту.

Још свеобухватније гледиште спремности за школу нуди *интеракционистички приступ*, који представља интеграцију елемената претходно описана три приступа, те наглашава значај интеграције вештина које деца са собом понесу у школу и искуства изван, пре и током школе. У том оквиру изведена је радна дефиниција спремности за школу која укључује три компоненте: *спремност деце за школу* – одражава могућност да деца учествују у учионици и стичу искуства која се односе на учење; *спремност школе за децу* – подразумева реакцију школе на уписану децу; *подршка породице, заједнице и релевантних служби* – подразумева промовисање породичног и окружења заједнице у подршци учењу (Dockett & Perry, 2007; Rhode Island KIDS COUNT, 2005; UNICEF, 2012).

Дакле, спремност за школу треба посматрати као вишеструк конструкт (Büyüktaşkapu Soydan, 2017; Nissksaya, 2018； Woodhead & Moss, 2007), односно као мултидимензионални феномен који подразумева једнаке напоре и заједничку одговорност како деце тако и одраслих у породицама и установама у заједници, те захтева спремност и удружено деловање микросистемских развојних окружења. У складу са оваквим становиштем, у даљем тексту ће, поред осврта на домене дететовог развоја, акценат бити стављен на домене спремности породице, предшколске установе/школе и заједнице као димензије које су од кључног значаја за пружање адекватних стимулуса за развој детета у целини, а самим тим за његов полазак у школу.

ДОМЕНИ ДЕТЕТОВЕ СПРЕМНОСТИ ЗА ШКОЛСКО ОКРУЖЕЊЕ

Раније дефиниције спремности за школу углавном су указивале на важност развијености одређених когнитивних способности, при чему је посебан акценат стављан на спремност детета да научи да чита (Arnold, Bartlett, Gowani & Merali, 2007; Shore, 1998). Уместо тога, савремено гледиште „спремност за школу" посматра као „скуп квалитета, услова и карактеристика који, ако су у интеракцији, деци омогућавају да искористе своје могућности и одговоре на школске захтеве" (Pianta, 2002, p. 4). Стога се у релевантној литератури (Arnold et al., 2007; High, 2008; Kagan & Rigby, 2003; Rhode Island KIDS COUNT, 2005; Shore, 1998; Wynn, 2002) указује на то да спремност за школу обухвата пет међусобно повезаних области: физички и моторички развој; социјални и емоционални развој; приступ учењу; развој комуникацијских вештина и писмености; когнитивни развој и општа знања. Сваки од ових пет домена дечјег развоја, наизглед различитих, али међусобно повезаних, имају своје битне одреднице.

Домен који се односи на *физички и моторички развој* (с обзиром на то да укључује факторе попут здравственог стања, раста, физичких способности и могућих сметњи у развоју) представља важну компоненту која детету обезбеђује могућност концентрације и потребну енергију за контекст какав је школски. Стога је важно да дете има правилну исхрану, равномерну смену сна, одмора и активности важних за развој фине и крупне моторике. Други домен, који се односи на *социјални и емоционални развој*, претпоставља да ће дете које воли да буде у друштву других и које је сигурно у своје способности време у школи проводити са уживањем. Као такав, овај домен садржи два међусобно повезана елемента која утичу на дететово учење и социјално прихватљиво понашање. Социјални развој огледа се у способности детета да оствари интеракцију са другом децом, као и да развије капацитете за саморегулацију, док емоционални развој обухвата дечју перцепцију себе, дететову способност детета да тумачи и изрази своја осећања, као и способност да разуме осећања других. Развоју овог домена доприноси пружање разноврсних искуствених прилика, као што су: обављање свакодневних послова, контакти са вршњацима, ситуације у којима оно треба да следи упутства и буде доследно, задаци који гарантују успех, али који изискују ослањање детета на сопствене способности, уз давање подстицаја и похвала од стране одраслих. Трећи домен спремности за школу је дететов *приступ учењу*, који се односи на дечју склоност да користи вештине и знања. Начин на који дете прилази учењу веома је важан јер дете које је успешно у школи ужива у учењу, па се као кључни елементи овог домена јављају ентузијазам, радозналост и упорност.

Потребно је обезбедити детету довољно прилика за истраживање, креативност, решавање проблема и преузимање одговорности. Четврти домен односи се на *комуникацију и писменост.* Слушање, говор и вокабулар чине комуникацију, док писменост укључује разумевање штампаних медија, смислених прича, рану писменост и повезивање слова са звуцима. Активности као што су слушање других, причање прича, коришћење различитих средстава за писање, цртање и бојење допринеће развоју комуникације и писмености. Коначно, пети домен односи се на *когнитивни развој и општа знања*. Овај домен подразумева размишљање и решавање проблема, као и знања о одређеним предметима и начинима на које свет функционише, а укључује математичка знања, апстрактно мишљење и машту. Оно што утиче на развој овог домена јесу пре свега посете различитим местима у заједници или суседству у којима деца искуствено уче, али и доступност различитих књига и материјала (Rhode Island KIDS COUNT, 2005; Wynn, 2002).

Узимајући у обзир важност сваког поменутог домена, јасно је да спремност за школу не треба ограничавати на једну област развоја или функционисања, већ је треба тумачити на холистички начин који укључује међусобни однос вештина и понашања кроз домене развоја и учења (UNICEF, 2012). У складу са тим, савремени концепт спремности за школу истиче да дете као члан различитих друштвених и културних заједница треба да представља активног учесника у обликовању свог идентитета. Притом је веома важно успостављање партнерског односа између породице, васпитно-образовних установа и заједнице, јер такав однос доводи до учвршћивања веза између дететових искустава и учења у различитим окружењима. Још ако су поменута окружења изазовна, захтевају интелектуално ангажовање, пружају осећај сигурности и могућности социјалног прилагођавања, дете ће успешније савладати прелазак из једне у другу средину (Pavlović Breneselović i Krnjaja, 2017).

ПОДРЖАВАЈУЋЕ ПОРОДИЧНО ОКРУЖЕЊЕ КАО ДИМЕНЗИЈА СПРЕМНОСТИ ЗА ШКОЛУ

Породица као битна димензија конструкта „спремност за школу" представља најважнију средину развоја и учења детета пре него што се оно укључи у формално образовање. То потврђују и резултати истраживања (Şahin, Sak & Tuncer, 2013), који су показали да већина испитаних васпитача и учитеља наводи породицу као развојно окружење које има круцијалну улогу у процесу припреме детета за школу. Такође, стручњаци сугеришу да је, поред важности сагледавања породичних социо-демографских карактеристика, још важније размотрити дешавања у породици и како та дешавања утичу на уче-

ње и развој деце (Dockett & Perry, 2007), те да је битно размотрити начине који би допринели оснаживању родитеља да успешно обављају родитељске улоге и да се активно укључе у процес учења своје деце (Zuković, 2013; 2017).

Током дететовог развоја јављају се разноврсне специфичне акције родитеља које обликују родитељско понашање. Три кључне карактеристике родитељског понашања, које поједини аутори (Edwards, Sheridan & Knoche, 2008, p. 3) називају родитељским ангажовањем, јесу: 1) топлина и осетљивост; 2) подршка развоју аутономије детета; 3) активно учешће родитеља у учењу. Иако су све три карактеристике веома важне за правилан развој детета и његово успешно сналажење ван кућног окружења, посебно треба издвојити трећу – активно учешће родитеља у учењу, која почиње са рођењем детета, а нарочито долази до изражаја током дететових предшколских година, тј. родитељи тада постају посебно свесни њене важности. Истраживања су показала да подржавајући услови у породичном окружењу и ван њега, организовани на многе директне и индиректне начине од стране родитеља – означавају неку врсту „породичног курикулума" (Edwards et al., 2008), те да односи, пракса и обрасци породичног живота који чине променљив „породични курикулум" представљају снажнији предиктор академског образовања од социо-економског статуса породице (Redding, 1997).

Породични курикулум односи се на праксу породице која укључује следеће компоненте: однос родитељ–дете, рутина породичног живота; родитељска очекивања и надзор (Polovina, 2008; Redding, 1997). Прва компонента *однос родитељ–дете* остварује се кроз: родитељско изражавање наклоности према детету; разговоре о догађајима у свакодневици; заједничке дискусије о прочитаном или одгледаном садржају (књиге, часописи, телевизијски или интернет садржаји); породичне посете различитим институцијама локалне заједнице (библиотека, музеј, зоолошки врт); пружање подстицаја детету у коришћењу нових речи и проширивању свог вокабулара. *Рутина у породичном животу* као друга компонента породичне праксе, односи се на: време за учење у породичном дому; време за рутинске активности на дневном плану (јело, сан, игра, рад, учење и читање); кутак за учење и читање; породично интересовање за активности образовног карактера, али и хобије, те игре. На овај начин детету се постављају јасне границе, подстиче се продуктивно коришћење времена и обезбеђује искуствено учење, што доводи до дечјег успеха у школи. Трећа компонента подразумева стављање нагласка на домаће задатке, што се остварује кроз *родитељски надзор* дететових активности у слободном времену (гледање телевизије, дружење са вршњацима) и *родитељска очекивања* у погледу максималног остваривања дететових потенцијала, остваривања успеха у школи, те целокупног раста и развоја.

Све наведене компоненте породичног курикулума, сагледане кроз адекватну интеракцију, стимулацију и подршку од стране родитеља – обезбеђују услове да дете буде спремно за захтеве школског контекста и да оствари што боље резултате у учењу. Другим речима, градивни блокови социјалног и емоционалног односа који су потребни за дететов успех у школи у значајној мери су зависни од подршке и односа прихватања унутар породичног контекста (Britto & Limlingan, 2012).

Стога, имајући у виду пре свега „моћ језика прихватања" (Gordon, 2003) у породичном контексту, димензија „спремне породице" у оквиру концепта спремности детета за школу подразумева стварање подстицајног породичног окружења и максималног родитељског ангажовања у осмишљавању свакодневних активности које ће припремити дете за успешно функционисање у школском окружењу. Значајан ресурс у том смислу могу бити развојно-превентивни програми подршке родитељима и породицама (посебно породицама у ризику) – (Zuković, 2017), било да је реч о програмима чији су носиоци васпитно-образовне институције, или да је реч о шире димензионираним програмима на нивоу заједнице.

КАПАЦИТЕТИ ИНСТИТУЦИЈА ОРГАНИЗОВАНОГ ВАСПИТАЊА И ОБРАЗОВАЊА КАО ДИМЕНЗИЈА СПРЕМНОСТИ ЗА ШКОЛУ

Другу веома важну карику дететове спремности за школу представља деловање предшколске установе и школе као институција организованог васпитања и образовања.

У контексту предшколске установе деца уче и стичу искуства на различите начине, при чему су од велике важности активности, представљени материјали, интеракција са вршњацима, понашање васпитача (Goble et al., 2016). Појављивање и смењивање различитих програмских модела присутно је у готово свакој културној и педагошкој традицији земаља које организују институционалне програме предшколског васпитања и образовања. Међутим, оно што доминантно спецификује одређени програм предшколског васпитања и образовања, као и његов допринос целокупном дечјем развоју – јесу активности којима су деца заокупљена и ниво ангажованости које оне омогућавају. Тако су у пракси присутни предшколски програми који полазе од детета и који укључују самодетерминишуће активности, спонтано истраживање и игру (Модел А), односно предшколски програми који се заснивају на активностима које су унапред припремили и осмислили одрасли (Модел Б) – (Klemenović, 2009).

С обзиром на значај оба модела, заступљена су стална преиспитивања истраживача који од њих има веће ефекте на дечју спремност за школу. Резултати студије (Chien et al., 2010, према: Goble et al.,

2016) указују на то да је за развој академских вештина деце ефикасније време проведено у контексту у којем је одрасли носилац активности. Међутим, поред значајног увида у то који је контекст најважнији за промовисање дечјих академских вештина, поменута студија се у том случају ограничава само на академски домен школске спремности. Друга студија (Burchinal et al., 2008, према: Klemenović, 2014) установила је пак умерен позитиван утицај предшколских курикулума заснованих на инструкцијима васпитача који као модел понашања утиче на развој академских и неакадемских вештина деце (коришћење језика, употреба различитих стратегија мишљења, развој сарадничких односа, комуникација са другима), с обзиром на то да је заступљена позитивна дисциплина и јасна повратна информација. С друге стране, резултати неких истраживања (Hirsh-Pasek & Golinkoff, 2011, према: Goble et al., 2016) предочили су да је развој социјалних вештина и опхођење детета према школи позитивно повезано са временом проведеним у контексту у којем активностима управљају деца. Нека истраживања (Nissksaya, 2018) показала су да традиционални приступ (у којем дете претежно заузима позицију објекта васпитнообразовног процеса) доприноси развоју вишег нивоа вербално-логичког расуђивања код деце, док развојни приступ (који полази од индивидуалних карактеристика деце) доводи до бољих исхода у погледу дечје иницијативе и успостављања равноправнијег односа између васпитача и детета. У светлу наведених разлика, значајно је указати на становиште да наведене активности и приступи не треба да представљају две стране једног континуума, већ да истовремено делују у пракси где се препознаје заједничка акција учесника (Graue, Clements, Reynolds & Niles, 2004), те да се предшколски курикулум заснива на комбинацији садржаја и активности иницираним како од стране деце тако и од стране васпитача (Taguma, Litjens & Makowiecki, 2013).

До недавно се и у нашој земљи, у години пред полазак у школу, остваривао Припремни предшколски програм Модела А и Модела Б, којим се настојао успоставити континуитет са основношколским програмом (*Pravilnik o opštim osnovama predškolskog programa*, 2006), те су и код нас међу истраживачима и међу практичарима често биле присутне дилеме у погледу ефеката ових модела. На темељу таквих дилема, а подстакнуто примерима добре праксе у Србији и свету, као и потребом усклађивања стратешких и законских докумената са општим друштвеним променама и савременим теоријским поставкама о раном развоју и учењу, настале су нове концепције Основа програма – Године узлета (*Pravilnik o osnovama programa predškolskog vaspitanja i obrazovanja*, 2018). Тиме је направљен значајан помак и у погледу унапређења активности које би могле допринети дететовој спремности за школу, с обзиром на то да се програм манифестује кроз односе које дете гради са вршњацима и одра-

слима, као и кроз интегрисано учење у којем делање детета обухвата игру, активно учешће у животно практичним ситуацијама и ситуацијама планираног учења.

Када је реч о школском контексту, крајем прошлог века постаје актуелна тзв. транзициона тематика, која пажњу помера са детета које је спремно за школу ка преиспитивању школских обележја и различитих облика рада који доприносе да се и школа прилагоди деци (Klemenović, 2014), што подразумева и осмишљавање транзиционих програма који олакшавају прелаз детета из предшколског у школско окружење (Krstić i Zuković, 2017). Као такви, транзициони програми имају за циљ премошћавање јаза и стварање партнерског односа између породице, предшколске установе и школе. Иако могу варирати од школе до школе, од заједнице до заједнице, чињеница је да њихов квалитет и ефикасност у великој мери зависи од комуникације и сарадње свих који су укључени у процес (Margetts, 2003). У вези са тим јавља се потреба утврђивања капацитета школе да се мења у смеру побољшања услова и прилика за свако дете. Тумачећи капацитет за промене, неки аутори (Stoll, 1999, према: Oterkiil & Ertesvåg, 2012) указују на то да организација сама по себи не може бити „спремна", већ је реч о динамичном процесу сталног раста и развоја. Такође, капацитет за промене, поред појединачних чланова организације, укључује и организацију у целини. Како ће људи деловати и какве ће односе успостављати у пракси деловања умногоме зависи од педагошког менаџмента и културе педагошке организације (Zuković & Knežević-Florić, 2014), односно од утицаја подземне реке осећања, обичаја, норми и вредности која тече испод површине свакодневних активности у школи (Peterson & Deal, 2002, према: Pavlović Breneselović, 2015).

У том смислу, група за ресурсе спремне школе водила је дискусију о факторима који карактеришу ефикасност школе и на основу тога идентификовала је десет кључних принципа спремних школа (Shore, 1998). Наиме, спремне школе: 1) обезбеђују услове за адекватну адаптацију на школско окружење; 2) теже континуитету између породице, предшколске установе и основне школе; 3) помажу деци да развију осећај припадности школском окружењу; 4) посвећене су успеху сваког детета; 5) посвећене су успеху сваког наставника и сваког одраслог који ступа у интеракцију са децом током школског дана; 6) уводе или проширују приступе који су показали да доводе до повећања школског постигнућа; 7) теже да мењају праксу и програме у случају да они немају користи за децу; 8) заступају дечје интересе у широј заједници; 9) преузимају одговорност за образовна постигнућа; 10) имају јако вођство (Shore, 1998, p. 8).

Укратко речено, спремност школе огледа се у њеној осетљивости на потребе сваког детета, у препознавању важности породичног

и предшколског искуства за успех у школском учењу, као и у пружању могућности укључивања свих актера ради лакше адаптације детета у новом окружењу.

РЕСУРСИ И ПОТЕНЦИЈАЛИ ЗАЈЕДНИЦЕ КАО ДИМЕНЗИЈА СПРЕМНОСТИ ЗА ШКОЛУ

Дететову и родитељску компетентност могу нарушавати или пак јачати различити посредни и непосредни утицаји из околине окарактерисани као обележја заједнице у којој породица егзистира (Garbarino et al., 2005, према: Pećnik, 2013). Чињеница је да постојање протективних фактора у заједници утиче на добробит њених чланова. Стога, расположивост заједнице различитим физичким, институционалним и социјалним ресурсима може битно допринети дететовој спремности за школу (Zaslow, Calkins, Halle, Zaff & Margie, 2000). Пружаоци услуга могу бити различите институције, организације, удружења на челу са њиховим представницима. С тим у вези, поједини аутори (Ferić, 2015; Nenadić-Bilan, 2015) услуге и програме подршке деци и породицама у заједници класификују на формалне и неформалне системе, док неки аутори (Pećnik, 2013) препознају и деловање полуформалних система подршке.

Формални систем подршке односи се на деловање јавног сектора, који, поред рада васпитнообразовних институција, подразумева и рад здравства, центра за социјални рад и судства. Здравство пружа услуге деци и њиховим породицама кроз превентивну (саветовалишта), примарну (домови здравља и здравствени центри) и секундарну (болнице) здравствену заштиту, док су центар за социјални рад, домови и установе за смештај деце задужени за дечју социјалну заштиту. Деловање судства подразумева улогу полиције и органа правосуђа у заштити деце од злостављања и занемаривања (WEBIN, 2015).

Неформални систем подршке чине шира породица, пријатељи, суседи и познаници. Чланове повезује природна заједничка повезаност, односно сродство и суседство, па се ради о природној социјалној мрежи подршке, у којој су заступљене активности попут разговора, посета, дружења, помоћи и неформалног деловања (Ferić, 2015; Nenadić-Bilan, 2015). Искуства обликована кроз овај вид интеракције важна су за сву децу, а посебно за децу из породица са лошим социоекономским статусом, нижим нивоом образовања родитеља, као и за децу из једнородитељских породица. У том случају, суседи се могу ставити у позицију додатних узора, ментора, старешина и супервизора деци која су део суседства (Zaslow et al., 2000). Осим доступности наведених људских ресурса, важна је и уређеност јавних површина као ресурса који поседују значајан потенцијал за јачање породичних и ванпородичних односа. Игралишта, рекреативни објекти и паркови

само су неки од јавних простора који представљају јединствени „дом на отвореном", чији су капацитети значајни и за децу и за одрасле. Поред унапређивања породичног дружења, међугенерацијске солидарности и међуљудских односа у заједници, значајан је и приступ утемељен на стимулишућим материјалима, те стварање различитих прилика за учење и игру намењених деци раног и предшколског узраста (UNICEF, 2014; Zaslow et al., 2000).

Полуформална подршка подразумева организовану мрежу грађана, у овом случају родитеља, деце и породица у заједници (Pećnik, 2013). Реч је о мрежи која се ствара ради задовољења потреба и решавања проблема грађана у случајевима када одређене институције и власти из различитих разлога (непостојање средстава, немање надлежности, застарели начини и приступи у решавању проблема и сл.) нису у могућности да на адекватан начин реагују (Radojičić i Rašković, 2006).

Дакле, спремну заједницу, као што истичу стручњаци (Kagan & Rigby, 2003), треба да одликује доступност институционалних ресурса, обезбеђивање сигурног и подржавајућег локалног окружења, као и координирано одлучивање о реализацији различитих програма подршке за децу и њихове породице.

КА УДРУЖЕНОМ ДЕЛОВАЊУ РАЗВОЈНИХ ОКРУЖЕЊА – ОД ТЕОРИЈСКИХ ЗАМИСЛИ ДО ПРАКТИЧНИХ РЕШЕЊА

Водећи се интеракционистичким гледиштем појма „спремност за школу", значајно је осврнути се на потребу удруженог деловања развојних окружења, односно на могућности имплементације овако теоријски утемељеног конструкта у праксу нашег васпитнообразовног контекста. Полазну основу, свакако, чини законски оквир на основу којег се доносе бројна стратешка документа и креирају релевантни програми васпитнообразовног рада у институцијама. Тако се, на пример, на основу члана 7 *Закона о основама система образовања и васпитања* (2017), у остваривању општих принципа образовања и васпитања, између осталог, посебна пажња посвећује сарадњи са породицом, локалном заједницом и широм друштвеном средином, те наглашава значај подршке преласку детета у следећи ниво школовања и остваривању континуитета у образовању и васпитању. Међутим, поставља се питање у којој мери предшколски и школски програми који произлазе из законског оквира заиста одражавају повезаност и удружено деловање свих укључених у васпитнообразовни процес, остварујући тиме континуитет и утицај на спремност детета.

Као прилог разматрању поменутог питања значајно је навести студију Krnjaja i Pavlović Breneselović, 2013, у оквиру које је вршена анализа Општих основа програма на којима је дуги низ година почи-

вао васпитнообразовни рад у нашим предшколским установама. Анализа је показала да је кроз улоге васпитача у Моделу А припремног предшколског програма било речи о планирању сарадње са породицом и друштвеном средином, али да улоге нису биле доследно приказане у сегментима програма који се тичу аспеката развоја. Слично је и са схватањем односа у моделу Б припремног предшколског програма, где је акценат стављан на социјалну готовост за полазак у школу и на садржаје у домену области упознавања друштвене средине. Поред тога, дете се сагледавало као одговорно за спремност за школу, уместо да се тежиште стављало на однос и заједничку спремност институција и заједнице у циљу обезбеђивања услова за образовање детета.

Овакво стање имплицира потребу вођења рачуна о дискурзивном значењу самог текста програма, јер програм (посматран као вредносни оквир који одређује оно у шта верујемо и чему тежимо по питању васпитања и образовања, улоге детета, одраслих и заједнице) помаже да носеће идеје и вредности постану уврежене културне норме свих учесника праксе и на тај начин трансформише систем (Pavlović Breneselović, 2015). Такође, имајући у виду реална дешавања у друштву и актуелне вредности које се одражавају на промене у образовном систему, неопходно је и да предшколски и школски програми буду сагледани кроз призму социјалног контекста у којем се обликују (Krstić, 2017). У складу са тим, питање диверзификације је од кључног значаја, посебно ако се има у виду да диверзификација доноси промене у схватању образовања као механизма културне продукције. У том оквиру, систем васпитања и образовања треба да поприми карактеристике отворености, аутентичности и демократичности, те да постане заједница деце и одраслих чије се активности заснивају на размени, дијалогу, заједничким истраживањима и делању (Miškeljin, 2014). Овакав приступ подразумева уважавање детета као компетентног бића са аутентичним начином изражавања и учења, али и грађење партнерског односа са породицом и широм локалном заједницом.

Иако се чини да се описан приступ у нашем образовном контексту још увек налази на клатну од теоријских замисли до практичних решења, очекује се да ће актуелни реформски подухвати у нашем систему јавног васпитања и образовања омогућити да подршка учењу и развоју деце/ученика заиста буде остварена кроз „заједничко учешће деце и одраслих као аутентичних људских односа и заједништва у ситуацијама, догађајима и активностима које за њих имају смисла” (*Правилник о Основама програма предшколског васпитања и образовања*, 2018, стр. 9–10). Притом је битно истаћи примере добре праксе који показују користи удруженог деловања развојних окружења. Тако, на пример, пројекат *Карика која недостаје – Развијање механизама подршке детету са тешкоћама при*

преласку на следећи ниво обавезног образовања у „редовном образовном систему” (Zlatarović i Mihajlović, 2013) представља модел свеобухватне, систематске, планиране и индивидуалне подршке деци са тешкоћама у развоју које полазе у први, односно пети, разред. Искуства деце, родитеља, стручњака у предшколским установама и основним школама, али и осталих стручних сарадника укључених у овај пројекат – представљају важан ресурс за унапређивање васпитно-образовне праксе у смеру оснаживања свих оних који су део образовног система.

Још један од примера добре праксе у нашој земљи јесте *Програм кућних посета породицама у руралној средини* (Mihić, Rajić, Mirosavljević, Stojić i Lukovnjak, 2016), с обзиром на то да је подразумевао учешће професионалаца из прешколског окружења (васпитача и стручног сарадника) и школског окружења (учитеља) у локалној заједници. Како су се циљеви односили на адекватно и благовремено информисање родитеља о начину на који ће дизајнирати простор за учење и упућивање родитеља на начине на основу којих ће подржати будућег првака и савладати почетне изазове током транзиционог периода, позитивни исходи програма огледају се у јачању родитељских капацитета и развијању вештина потребних за стварање подржавајуће породичне средине.

Пример добре праксе полуформалне подршке на нивоу заједнице јесте Удружење „Родитељ”[1]. Оснивачи удружења су родитељи који су, вођени личним искуствима, препознали значај системске подршке родитељству у нашој земљи. Чланове овог удружења чине стручњаци из различитих области – психолози, педагози, учитељи, васпитачи, логопеди, дефектолози, здравствени радници, правници и други, чиме се настоји одговорити на широку лепезу изазова које са собом носи родитељство. Поред доступности различитог садржаја, значајан подухват овог удружења јесте пилот-пројекат започет 2012. године. Ради се о Центру за рани развој деце (ЦРР), који има за циљ јачање родитељских компетенција деце предшколског узраста, нарочито деце која нису укључена ни у какав предшколски програм (вртићи, школице и сл.). Родитељи који нису укључени у активности центра имају прилику да своје педагошко образовање као родитеља о дечјем развоју и учењу унапреде путем доступног материјала на веб-сајту.

[1] Први огранак Удружења „Родитељ” основан је у Београду, након чега су њихове идеје и визија препознати и у другим градовима у Србији (Нови Сад, Ада, Темерин, Бачка Паланка, Сомбор, Сремска Митровица, Ниш, Пирот, Ужице, Чачак, Крагујевац, Краљево, а у току је и оснивање у још неколико градова), чије је припајање довело до Мреже удружења, која делује од 2006. године до данашњих дана (www.roditelj.org/mreza-roditelj).

Предочени напори теоретичара и практичара у нашем образовном контексту поткрепљују становиште да је за поспешивање школске спремности потребно размотрити могућности развоја дечјих вештина и понашања (Rhode Island KIDS COUNT, 2005), али и континуирано преиспитивати могућности оснаживања капацитета и удруженог деловања микросистемских развојних окружења која у значајној мери обликују дететов развој и понашање.

ЗАКЉУЧАК

Дискусије усмерене на то да ли деца треба да буду спремна за школу или је пак школа та која треба да буде спремна за децу – доводе до поједностављивања појма *спремност за школу*. Наиме, реч је о комплексној тематици с обзиром на то да развој и напредак детета изискује посвећеност и пажњу од стране различитих микросистемских окружења. Неспорно је да подржавајуће породично окружење представља један од круцијалних фактора који обликују дететову спремност за школу. Међутим, неспорна је и чињеница да деца и породице не обитавају у некаквом вакууму, издвојено од света који их окружује. Напротив, за успех и напредак детета, поред породице, заслужне су институције организованог васпитања и образовања, као и ужа или шира заједница (Early Childhood Collaboration Network, 2000). Предшколска установа својим програмским садржајима, али и материјалним и организационим капацитетима, у великој мери детерминише развој предшколског детета. С друге стране, савремено схватање спремне школе захтева средину која је отворена, флексибилна, спремна за промене и увођење иновација. Пре свега се мисли на могућност школе да изађе у сусрет потребама сваког детета. Поред тога, како истичу неки аутори (Pavlović Breneselović i Krnjaja, 2017), опште друштвене и економске карактеристике, пракса друштвене бриге о деци и просветна политика једне заједнице обликују услове и начине одрастања детета. У том смислу, питање спремности детета за школу представља заједничку одговорност свих заинтересованих страна у пружању подршке детету да буде припремљено за нову врсту захтева који ће се јавити у школском окружењу (Early Childhood Collaboration Network, 2000; Zuković, 2013).

Дакле, чињеница је да сваки развојни контекст, у складу са својим специфичностима и обележјима, обезбеђивањем адекватних услова и услуга, може допринети развоју деце и њиховој спремности за школу. Међутим, изузетно је важно јачање удруженог деловања кроз координисани рад и интеграцију услуга између различитих микросистемских развојних окружења како би њихови ресурси и капацитети на прави начин били искоришћени, те како би се остварио континуитет утицаја и максималног остварења дететових потенција-

ла у новом образовном окружењу. Ово је остварљиво уколико родитељи и професионалци имају јасну визију концепта „спремности за школу" (Broström, 2003) и уколико применом приступа коконструкције (Niesel & Griebel, 2007) међусобно ускладе очекивања, те пронађу начине на које се процеси учења у различитим окружењима могу повезати. Уз све наведено, спремност детета за школу подразумева континуирано развијање компетентности установа, и то у смеру организација које уче и делују у трајном стању промене и где знање настаје на основу укључености и размене свих актера – деце, родитеља, васпитача/наставника, шире заједнице (Slunjski, 2006). На тај начин установе постају места „судара" или, боље речено, „сусрета" компетенција одраслих (значајних других), који су подједнако важни у дететовој припреми за школу.

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CHILDREN'S SCHOOL READINESS: THE IMPORTANCE OF READINESS AND THE INTERACTION IN THE MICROSYSTEMS OF THE DEVELOPMENT ENVIRONMENTS

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Summary

When starting school, a child begins a new chapter in their development, where a new role of a child as a first-grade pupil goes through a wide range of different changes and demands in each respective manner. Bearing in mind, on the one hand, different individual characteristics of every child, and, on the other, new and different experiences when starting school, there is a tendency to re-examine the factors shaping (and influencing) the child's readiness for school. Starting from a brief retrospect of the approaches that review the phenomenon of school readiness, the essence of this paper consists of an interactive approach which, beside the importance of individual children's

characteristics, also emphasizes the significance of conditions in the microsystem of the development environments in which the child spends their time, as well as their synergistic actions. In accordance with this viewpoint, the paper offers a retrospect on the aspects of children's school readiness, but also the aspects of the readiness of family, pre-school institution/school and community, as key environments which need to offer adequate stimuli for children's development in its entirety, and thus for their starting school. Apart from that, there is an emphasis on the importance of establishing partnership between family, educational institutions and community, since that relationship leads to the strengthening of the connection between children's experiences and learning in these environments. Considering the aspects of children's school readiness, it can be noted that children's school readiness covers five interconnected areas: physical and motor development; social and emotional development; approach to learning; communication skills and literacy development; cognitive development and general knowledge. Regarding the family context, the paper accentuates that the dimension of the "ready family" within the concept of children's school readiness purports supportive family surroundings, i.e. creating an adequate "family curriculum" and maximal parental involvement in creating daily activities which would prepare the child to successfully adapt to the school environment. Another extremely significant element in children's school readiness is the activity of organized educational institutions. Apart from the emphasis on the individual importance of the pre-school institution and school, along with the roles of the educator and teacher as the representatives of these environments, the significance of their cooperation and adjusted activity especially contributes to the continuity of educational influence. In this manner, there is undoubtedly the influence of protective factors in a community that is the availability of various physical, institutional and social resources within a community, which can greatly contribute to children's school readiness. Regarding that, there are prominent resources offered by formal, semi-formal and informal support systems on the local environment level, and the possibility of joint action of development environments through examples of good practice in our educational context. Although each of these mentioned microsystem environments individually contributes to children's school readiness, it can be concluded that the best effects are accomplished through their interaction which leads to the continuity of influence and the maximum of reaching children's potentials in new education environment.

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DO YOU SPEAK GREEK? A CASE STUDY OF L2 SERBIAN LEARNERS OF GREEK [a]

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Abstract

The current study focuses on presenting the learning situation and the development of productive skills, namely, speaking and writing in a sample of second year students of Modern Greek Studies at the University of Belgrade. More specifically, the study consists of two parts. Initially, the paper presents the foreign language approach of teaching Greek at the B1 level as a foreign language and the teaching materials used within a specific Greek language course – Praktikum. Secondly, two tasks are administered to the subjects of the study in order to examine their productive skills and perform an error analysis of their output, followed by a questionnaire where they evaluate themselves and also the teaching process. The aim of the research is twofold: on the one hand, to show whether each student applies the same strategies in speaking and in writing, and to present the different dynamics that affect productive skills.

Key words: Greek as a Foreign Language, speaking, writing, strategies, error analysis.

ГОВОРИТЕ ЛИ ГРЧКИ? СТУДИЈА СЛУЧАЈА СТУДЕНАТА НЕОХЕЛЕНИСТИКЕ

Апстракт

У овој студији аутори се баве дидактичким приступом и развојем продуктивних језичких активности, дакле писане и говорне продукције, у настави модерног грчког језика као страног на Филолошком факултету Универзитета у Београду и састоји се из два дела. У првом делу представљени су како дидактички приступ

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који се примењује у настави модерног грчког као страног језика на Б1 нивоу ЗЕОЈ-а тако и дидактички материјали који се користе за развијање продуктивних језичких активности. У другом делу студије анализирали смо како писану тако и говорну продукцију студената друге године Неохеленистике. Након тестирања, студенти су попуњавали упитник у вези са стратегијама које користе за развој писане и говорне продукције, али и износе своје ставове у вези са дидактичким материјалима који се користе у настави. Циљ овога рада је двострук: с једне стране, приказује да ли студенти користе исте стратегије за развој обе продуктивне активности, док са друге стране указује на различите факторе који утичу на говорну и писану продукцију.

Кључне речи: грчки као страни, писана и усмена продукција, стратегије, анализа грешака.

1. INTRODUCTION

1.1. Scope of the Study

The objective of the present work is to explore the different challenges students encounter in both oral and written production when learning Greek as a foreign language. For this reason, a sample of 22 second year students of Modern Greek Language and Literature at the University of Belgrade, who have already attained the B1/CEFR level in Greek[1], were assigned certain tasks. More specifically, the paper addresses the teaching methods and materials within the framework of a specific language course – the *Praktikum.* Additionally, in order to address the participants' productive skills, two tasks were administered and their speaking outcome was analyzed in contrast with their writing performance. Hence, the study is realized in a multifaceted way, involving: a) an overview of the teaching material of the *Praktikum*, which is a mandatory course that focuses on the productive skills during the second year of Modern Greek Studies b) the administration of two tasks which assessed the participants' oral and written ability c) a juxtaposition between their written and oral performance and error analysis and d) the completion of a questionnaire[2] showing the subjects' opinion of the teaching approach as well as their personal evaluation.

[1] The level of the students was attested and verified by means of a diagnostic test. This test was administered prior to the two tasks to the whole class of second year students. The subjects sat a sample examination of four parts, corresponding to the four language skills (Listening, Reading, Speaking, and Writing) according to the B1 level (CEFR) available online at the candidates' care of the Centre for the Greek Language (CGL) and the Hellenic American Union. The subjects selected for our study had achieved a high passing grade. This means that only 22 students took part in this study out of the total of 60 students.

[2] The questionnaire is available at the followed link: http://www.fil.bg.ac.rs/wp-content/uploads/obavestenja/neohelenistika/Questionnaire.pdf.

1.2. Theoretical Approach to Productive Skills

Learning a new language consists of four large domains: listening, speaking, reading, and writing (Canale & Swain, 1980). The four domains need to be incorporated into lesson planning, and the assessment of L2 proficiency, so that a balanced program is achieved - a program that is "a combination of whole language and skill development approaches" (Uzuner et al., 2011, p. 2126). Therefore, in order for our students to maximize their performance and keep their motivation high, the teaching approach bears a communicative quality (Lee, 1995), while the teaching material serves a communicative purpose in the target language (Little, Devitt, & Singleton, 1989). We could also say that part of the *Praktikum's* curriculum is based on Task-Based Instruction (Nunan, 1999) and Content-Based Instruction (Oxford, 2001).

In other words, the students encounter authentic texts created by native speakers and are encouraged to participate in class discussions. The educators try to enhance the students' vocabulary, grammar and sub-skill development which focus on the lexicon of the content. At the same time, the goal is to fulfill the students' needs (Spiegel, 1998).

What seems to be particularly challenging, though, is oral and written production since it requires additional effort. As Bygate (2002) notes, speaking is a highly complex skill. The speaker has to activate his working memory, retrieve words and arrange them in such a syntactic order as to be semantically meaningful. According to Levelt's model, talk presupposes the processes of *conceptualisation*, *formulation*, and *articulation* (Bygate & Samuda, 2005, p. 43). All three function as a "cascade" meaning that they interact and overlay. However, the speakers' capacity displays a differentiation: "a speaker may have difficulty sorting out the conceptual content; or in finding words to express it; or else in articulating the words, each with different implications for planning" (ibid.). This is something observed in the participants examined, a point that triggered the implementation of this particular research.

In addition to personality traits, which also affect production skills, another factor that influences oral performance is the time available to prepare the task and the familiarity of the task or the topic itself. As Ellis (2005, p. 45) confirms, improvement is noted during the re-run of a test. As he explains: "formulation is likely to be speedier and more accurate." Cohen (2011, p. 12) also states that reviewing the clustered material facilitates memory work: "Repeated contact with the material could be considered as a form of rehearsal [...]" Or, as Ellis (2005, p. 38) claims: "The first meeting with the material includes the internalization of information and content and organization into communication units," while in the second contact with the same material or communication circumstance, the student experiences less stress, provided the conditions are the same (ibid.)

Taking into consideration the aforementioned point, it is important to note that the *Praktikum* introduces task repetition in ways students find motivating. The texts presented in the *Praktikum* concern everyday activities, or regular and familiar themes at the B1 level, in order to facilitate the students' oral and written production in Greek. Each unit is enriched with a sufficient number of similar texts, enabling the students to rehearse lexical and grammatical items. As Bygate and Samuda (2005, p. 45) argue, the rehearsal gives learners a better opportunity to integrate their linguistic resources. In this way, students are expected to enhance both their cognitive strategies, namely, "awareness, perception, reasoning and conceptualization" processes, and their metacognitive strategies, namely, "preassessment and preplanning, online planning and monitoring, and post-evaluation of language learning activities and of language use events" (Cohen 2011, p. 19).

In general, students are encouraged to join in discussions when they are triggered by an interesting topic, or to participate in groups and engage in role-plays along with the tutor enhancing collaborative language learning (Gómez, 2016) and favoring the implementation of communicative tasks: "A piece of classroom work which involves learners in comprehending, manipulating, producing or interacting in the target language while their attention is principally focused on meaning rather than on form"[3] (Nunan, 1989, p. 10).

2. DESCRIPTION AND EVALUATION OF THE PRAKTIKUM

Oral and written production skills are practiced in the framework of the course *Praktikum* (*Praktikum 3* – winter semester and *Praktikum 4* – spring semester), as mentioned previously, which aims at boosting the students' comprehension and production abilities. The curriculum dictates 3 teaching hours with homework assignments. A selection of texts and tasks from the following three course books constitute the core material of the *Praktikum*:

1) *Modern Greek for Immigrants, Refugees and Foreigners Level B... and good luck* (Kamarianou & Prodromidou, 2004)
2) *Modern Greek B* (Pathiaki, Simopoulos & Tourlis, 2012)
3) *Klik – Level B1* (Centre for the Greek Language)

The *Praktikum* course was introduced in the academic year of 2012/2013 when the new curriculum was accredited. All three coursebooks were designed for foreigners who have already achieved the A2 level and continued towards the B1 level. For writing skills, a repeating pattern of

[3] There is also the possibility that in a communicative task students focus on form (Swain, 1997b); something that was attested in the experimental part.

activities or exercises is used, mainly letters or articles, e.g. movie reviews, a letter to the city mayor concerning recycling, a letter of complaint to a restaurant owner, etc. There are modules for revising vocabulary, grammar, and written and spoken language practice. As far as oral production skills are concerned, the books include role-play exercises and open-ended questions where learners are asked to give their opinion on various topics. There are no image description exercises, sketches, or image-based narratives.

Moreover, the *Praktikum* entails the use of new technologies, namely the Moodle platform. The online platform informs the students about the material being taught and provides them with a variety of exercises.

3. EMPIRICAL PART

3.1. Methodology

3.1.1. Design

The empirical part consists of two phases. The first phase concerns the students' oral and written achievement on the following tasks:

Writing: *You are a nutritionist and you are writing an article for the local newspaper "Health and Beauty" where you discuss the eating habits of young people in your country. In a text of about 200 words, give advice and propose solutions for a proper diet.*

Speaking: *Discuss the notion of a healthy diet and the eating habits in your country. You will be given two minutes to prepare to talk about the topic on the task card.*

The second phase involves the administration of a questionnaire. As previously mentioned, it presents the students' viewpoints and perceptions of the efficacy and quality and/ or suitability of the material, as well as their strengths and weaknesses. The completion of the questionnaire took no more than 15 minutes, and it was done online by the same students voluntarily, meaning that they could refuse to complete it or decline to do so if they felt uncomfortable with any of the questions. Furthermore, only a vague, general description of the purpose of the questionnaire was given so as not to lead the participants to a specific response. A less biased explanation was offered: "The purpose of this research is to identify your study habits and improve teaching."

3.1.2. Participants

The selected sample constitutes 1/3 of the second year students (22 participants), with an average age of 20. Six males and sixteen females were selected for the sample. The criteria for their selection were their high performance in the B1 sample test administered prior to the tasks, and their active in-class participation during the spring semester 2016/2017.

3.1.3. Procedure

Initially, the students were tasked with writing an in-class essay within a 45-minute period. This written part took place on May 2017, while the second task was realized a month later, in order to ensure that the students would be creative and would not repeat the same expressions and ideas used in the essay. Here, the students had 2 minutes to think about the topic, and then approximately 2-3 minutes to answer the question. Before the recording started, the participants were briefly introduced to their task. They were informed about the recording process and expressed no objections. Hence, their responses were recorded and their oral production was later processed, along with the written one. The steps of our study are as follows: 1) the identification of strategies 2) the identification and description of errors, and 3) the exemplification of errors (the steps suggested by Corder 1974 cited in Ellis and Barkhuizen, 2005).

3.2. Analysis of the Results

3.2.1. Oral activity: the communication strategies used

The students' overall performance was satisfactory enough since they provided well written essays in the writing task, and during the oral activity they covered the recommended time by providing their opinions and justifying them. In terms of communicative language competence, their essays and their speaking performance were assessed based on the global scale of the criteria of Independent User Level B1 of the Common Reference levels[4]. Naturally, mistakes were made, which were itemized in lists and analyzed. Before moving on to a detailed examination of the indicative errors, it is important to briefly review the communication strategies which the participants mainly recurred to in the oral activity. Concerning their classification, we adopted the taxonomy suggested by Dornyei and Scott (1995) who distinguish them into direct, interactional and indirect strategies.

a) Direct strategies:

i. Message Replacement: (also Corder, 1983; Faerch and Kasper, 1983): when the intended meaning was not achieved, the speaker tried to replace it with something similar:
Σημερινοί άνθρωποι [simeriní ánθropoi] (3) = "people of today" was replaced with "σύγχρονοι άνθρωποι" [síŋxroni ánθropoi] = "contemporary people", probably in an attempt on the part of the student to use a more 'eloquent' word.

[4] At the stage of 'Threshold' (B1 level), the language competence is examined in relation to the following components a) linguistic b) sociolinguistic and c) pragmatic. https://www.coe.int/t/dg4/linguistic/Source/Framework_EN.pdf

ii. **Code Switching:** using words from the mother tongue due to the inability of the speaker to express themselves in L2 in an attempt to compensate for the "deficiency":
μπουλίμια [bulimía] instead of *βουλιμία* [vulimía]

iii. **Restructuring** (Faerch and Kasper, 1983): the search for an alternative syntactic plan which could compensate for the lack of linguistic resources:
Δεν σημαίνει [δén siméni]= "it does not mean that…" was replaced with *δεν έχει μεγάλη σημασία* [δénéxi meγáli simasía]= "the fact that … is not of great importance"

iv. **Literal Translation/Conscious Transfer** (Tarone, 1977) - **Negative Transfer** was particularly observed: Ellis (1997, p.51) refers to the interference of mother tongue as 'transfer'. According to him, it is 'the influence that the learner's L1 exerts over the acquisition of an L2 (ibid.):
Κάθε δεύτερη μέρα (10) [káθe δéfteri méra] = every other day. The expression exists in Serbian, but not in Greek; it is a literal translation.

v. **Word Coinage/Circumlocution/Approximation [or paraphrase** (Tarone, 1977)**]- Semantic Contiguity** [(classified in achievement strategies (Willems, 1987)]: a new word is created either deliberately or accidentally without using the word formation processes: *Χοντράδα* [xondráδa] (3). The speaker intended to say "obesity" which in Greek is "παχυσαρκία" [paxisarkía]. Instead, she coined this word from the Greek adjective *χοντρός* [xondrós] = fat.

b) Indirect strategies

In their oral performance, the participants used a large number of **fillers** and **repetitions** or own-performance problem-related strategies according to Dornyei and Scott (1995), and especially self-repair in their attempt to produce a flawless outcome. Some participants focused on form and asked for comments from the researcher at the end of the recording. This was expected since the sample consisted of very good students who have a solid grammar base (Dulay and Burt, 1978).

vi. **The Use of fillers:**
(Εμ..) [em], βέβαια [vévea]= of course, λοιπόν [lipón]= so, δηλαδή [δilaδí]= for instance, μήπως [mípos] = maybe, ίσως [ísos] = probably, τελοσπάντων [telospánton]= anyway, δεν ξέρω [δén kséro] I don't know.

The next section shows indicative examples of the most common mistakes recorded from their oral and written production, respectively. The sample shows that specific areas are equally "problematic".

3.2.2. Oral versus written production: error analysis

On the whole, the main difference between the students' oral and written production is an increase in mistakes in expression, accentuation and repetition due to self-correction and the use of fillers. This was expected as oral activities impose time limits which raise the affective filter of the speakers and prevent input from being used during the learning process in general (Dulay and Burt, 1977). Another factor that may have increased the students' anxiety in the oral activity is the fact that they were being recorded, even though they voluntarily participated in the research. However, in both the oral and the written task, the participants faced difficulty in certain grammatical areas.

Theodoropoulou and Papanastasiou (2001, p. 200-201) distinguish three categories of errors: mistakes concerning a) the language system, b) the use of language and c) the written form of the language. This section exemplifies the students' mistakes in all three areas. The most common mistakes relate to 1) aspect, 2) the definite/indefinite article or zero article, 3) inflections, 4) spelling and 5) stress.

These areas were the most challenging for the participants in both their oral and written performance. In fact, spelling errors were attested in the written task, while stress solely during their speech. Additionally, we can say that interference errors – or interlingual errors – were observed and were attributed to the influence of Serbian, the mother tongue, and intralingual ones, or developmental errors, due to the difficulty of Greek, the target language (Dörnyei, 2005). The results below are in accordance with Vervitis, Kapourkatsidou and Stojičić (2012), where a similar examination of the students' written essays featured errors in article usage, aspect, spelling and vocabulary. In our case, the indicative examples of both tasks are presented below.

- *Verb*

i. Aspect

In terms of tenses, common mistakes in oral and written speech concern the aspect of the verb. There is a tendency to use the imperfective, probably due to the transfer from their mother tongue. The results also agree with other studies of non-native speakers of Greek related to aspect (Papadopoulou, 2005). Examples are provided from both tasks.

Writing:

1. *Να πάτε κάθε εβδομάδα…* (16)[5] [na páte káθe evδomáδa]
   "To go every week…"[6]

[5] This numbers stand for the candidate i.e. the 16th candidate who participated out of the 22.

[6] The English translation in certain examples produces grammatically correct sentences, which is not the case in the Greek equivalent.

2. *Δεν τους δώσουν το καλό παράδειγμα*…(11) [δén tús δósun to kaló paráδiγma]
   "They do not set a good example… "

Speaking:

3. *Δε λέω ότι δεν πρέπει να πάμε σε*… φαστ φουντ (2) [δé léo óti δén prépi na páme se… (fastfood)]
   "I am not saying that we should not go to… fast food restaurants"
4. *Θα μιλάω για τις συνέπειες…(*17) [θa miláo ja tis sinépies]
   "I will talk about the consequences…"

ii. Reflexive verbs and passive voice:

Writing:

5. *Η κατάσταση χειροτερεύεται* (15) [I katástasi xiroterévete]
   "The situation gets worse…"
6. *Οι περισσότεροι άνθρωποι τρώγονται* (21) [I perisóteroi ánθropoi trójonte]
   "Most people are eaten…"*

Speaking:

7. *Η σωστή διατροφή αποτελεί από…**(13) [I sostí δiatrofí apotelí apó]
   "The right diet consists of…*
8. *Να προετοιμαστούμε ταπεράκια* (3) [Na proetimastúme taperákia]
   To get prepared lunchboxes*

- *Articles*

Another frequent mistake is the use of articles. There is a tendency either to overuse the definite article – probably as the default, i.e. example (10) – or to omit it when they produce general statements, i.e. example (12). Additionally, there is a tendency to misallocate it in front of demonstrative pronouns *την εκείνη* [tin ekíni] = "the that"*.

Writing:

9. *Το μέρα* (3) [iméra] = "the day": The gender of the noun is feminine not neuter.
10. *Προτείνω η εξής*…. (7) [*protíno i eksís*]= "I propose the following": The gender should be neuter not feminine.

Speaking:

11. *Υπάρχει το σοβαρό πρόβλημα που είναι* (11) [ipárxi to sovaró próvlima pu íne]= "there is the serious problem that is…"*: No article is needed.
12. *Έχουν τις άλλες υποχρεώσεις* (9) [éxun tis áles ipoxreósis]= "they have the other responsibilities…"*: The article was placed in the wrong position.

- *Weak forms of personal pronouns*

Even though the weak form is present in Serbian, learners still seem to have difficulties with it in Greek.

Writing:

13. *Μήπως (ίσως) δεν (το) ξέρετε αλλά το ψήσιμο…(*13).[mípos δén (to) ksérete alá to psísimo] = "maybe you are not aware of the fact that…"[7]
14. *Το κόκκινο κρέας είναι κατάλληλο να (το) τρώμε*-(2) [to kókino kréas íne katálilo na (to) tróme]= "the consumption of red meat is suitable for…"

Speaking:

15. *Οι ειδικοί συμβουλεύουν τους…* (21) [I iδikí simvulévun tus] = "the experts advise them…"

- *Expression*

Errors in expression were also frequent. Taking into account the fact that the students have reached the B1 level, knowing when to use the appropriate vocabulary and making the right judgments for vocabulary items can still be perplexing for them. For this reason, they usually simplify their speech. Some utterances were the outcome of transfer from L1, i.e. examples (16) and (17).

Writing:

16. *Πως ο τίτλος λέει* (11) [pós o títlos léi…]= "as the title says"
17. *Κάθε δέκατος άνθρωπος* (11), [káθe δékatos ánθropos]= "every tenth person"

Speaking:

18. *Δύο φορές στη μέρα* (10) [δíoforés sti méra] = "twice a day"
19. *Τι είναι το κλειδί της σωστής συμπεριφοράς* (16) [tí íne to kliδí tis sostís simberiforás] = "the key for a right attitude in life"

- *Concord/ agreement*

The form or inflection of the words in some phrases were not compatible with each other according to the rules of the Greek language.

Writing:

20. *Τα κολατσιά* (17) [ta kolatsjá]= "snack": the noun has no plural form in Greek. The form that the candidate wrote is non-existent.
21. *Πολλά παιδιά περίπου 14 χρόνια* (9) [polá peδjá] = "many children around 14 years old"

Speaking:

22. *Τα παιδιά…. Αυτοί…* (17) [tapeδjá…aftí…]= "the children….they…."
23. *Ένα καλό ζωή* (13) [éna kaló zoí] = "a good life"

- *Spelling (written task)*

24. *Βούτηρο* (7) [vútiro] = "butter"
25. *Εξοικονώμηση* (16) [eksikonómisi] = "saving"

[7]The translation cannot bring out the errors in Greek.

- *Stress (oral task)*

In oral production, improper stress assignment and intonation were conspicuous:

26. *Γέροι – γεροί* (20) [jéri- jerí]: "old people" instead of "strong people"
27. *Κάρκινος –καρκίνος* (1) [karkínos- kárkinos] = "cancer"

- *Morphology*

In the absence of the precise vocabulary item, the subjects resorted to novel, non-existent expressions in L2. They appear to be equally resourceful in productivity based on previously entrenched morphological patterns. This means they may form novel verbs, nouns or adjectives by adding productive morphological affixes to the stem. However, transfer from their mother tongue is also noticed, i.e. example (29). The translation into English provides the candidates' intended meaning.

Writing:

28. *Σας θαρραλέω* (2) [sas θaraléo] = "I urge you"
29. *Μαγειρευτά αυγά* (7) [majireftá avγá] = "fried eggs"

Speaking:

30. *Χοντράδα* (3) [xondráδa] = "obesity"
31. *Ταχυφαγειρεία* (13) [taxifajiría] = "fastfood restaurants"

All in all, assessing their overall performance, the students employed the same strategies in both productive skills, and they also made similar mistakes in the same grammatical areas in both the speaking and the written task.

The difference lies in the perceived lack of precision in their oral performance. However, the lack of precision was combined with creativity since the participants coined non-existent derivatives, i.e. examples (30) and (31). Furthermore, the oral production was more simplified than the written outcome. The vocabulary range was limited, the grammatical accuracy more "afflicted", and anxiety overwhelmed the students. In terms of body reactions, only a couple of students blushed and avoided eye-contact. As Ur (2000, p.111) notes: "Learners are often inhibited about trying to say things in a foreign language in the classroom. Worried about making mistakes, fearful of criticism or loosing face, or simply shy of the attention that their speech attracts." Finally, we cannot overlook the fact that the majority of our sample delivered satisfactory results (both in speaking and writing). Here, it should be stressed that their phonemic abilities in Greek were particularly strong.

This could be attributed either to internal goals (Cook, 2002) or to the organized teaching of L2 (Astara and Vasilaki, 2011). Indeed, the majority of students (including our sample) appear to be extremely motivated to learn Greek. Apart from their motivation, the design of the language course ensures the cultivation of their linguistic awareness. In similar studies of L2 learners of Greek it was attested that "when students

who have begun to learn C2 through organized teaching, […] they obviously have better standards for the acquisition of C2" (Astara and Vasilaki, 2011, p. 73).

4. THE LEARNERS' ATTITUDE

Although the questionnaire focuses mainly on speaking, it also includes a few questions relating to other parts, since all domains - listening, speaking, reading, and writing- are interwoven in the teaching process.

Highlighting the most basic points, we identified certain particularly revealing tendencies (see Appendix). Overall, the students evaluate themselves as consistent with their home assignments (77%). As a means to improve their production skills in the target language, they indicated that writing essays is the best practice (72%). Moreover, they pinpointed as dominant the fact that their corpora place emphasis on both reading (45%) and listening comprehension (45%). However, 15 out of 22 participants think that in the classroom setting prominence is given to listening comprehension (68%).

Moreover, given the chance, half the subjects (50%) participate actively in class discussions. On top of that, based on their choices in the questionnaire, speaking should be reinforced (68%).

During oral practice in class, the subjects distinguished the following strategies: taking notes (54.5 %), following the lecturer's advice (36%) and using dictionaries or other sources (45%). The importance of using dictionaries was underlined for both speaking and writing. Another notable point is that a devastating majority of them claimed to feel anxiety in oral exams if they are not certain of the correctness of their utterances (77%). This is in accordance with the results of the speaking task, because a few exemplary students exhibited symptoms of anxiety: they started repeating words, made a lot of gestures, and even mumbled. Furthermore, they pinpointed that the lecturer should not intervene before the delivery of their complete answer in order not to obstruct the flow of their words (54.5%). However, a considerable number of the participants prefer "on the spot correction" (40.9%). In terms of the type of oral activities, giving one's opinion, or making an extensive argumentation are preferable (59%) to short answers (36.35) or role play activities (4.5%).

Last but not least, in addition to speaking practice, the three areas the students indicated significant for their progress in the target language are: a) grammar exercises (50%), b) listening comprehension exercises (36.3%) and c) vocabulary exercises (31.8%).

The questionnaire reflects the students' own stance on their productive skills and the way these are approached by the curriculum and the educators. The students seem to acknowledge "the practice of the four primary skills of listening, reading, speaking and writing," more specifically, the fact that

"acquiring a new language necessarily involves developing these four modalities in varying degrees and combinations" (Oxford, 1990, p.5-6). Another crucial point is the fact that the students use dictionaries. When used efficiently and successfully, dictionaries constitute a source of word information used autonomously by students. Hence, learners feel more self-confident as a result of their ability to use the dictionary (Gonzalez, 1999).

5. CONCLUSION

Our research was an attempt to depict how Serbian learners of Greek at the B1 level "deal with" written and speaking activities. For this reason, the study delved into the teaching method, the strategies our students used, the errors they made and their feelings. As Dornyei and Ryan (2013, p.91) said: "It is important to look at the person as a whole, not just those aspects that mark them as a 'language learner'" (see also Dornyei, 2009a).

Additionally, the incorporation of the *Praktikum* as a core Greek language course at this academic level is useful for two reasons. Firstly, it helps students to consolidate their knowledge in the target language and minimize feelings of pressure and stress. Moreover, it helps them gain experience in structuring their speech. Both skills serve the same purpose, that of conveying a message, which is the basic criterion that shows a good language learner. Finally, the questionnaire highlighted the point that students usually do not feel at ease to ask their teachers things they usually notice when they cannot express themselves precisely in the target language in the way they wish.

What is also of great importance are the cultural factors that seem to interweave with learning Greek, i.e. the geographical proximity of the two countries, the various historical events where the two countries came into contact, and/or the recent economic deals among the two countries. In other words, in our case, the Serbian learners of Greek appear to be highly motivated learners of Greek[8], which results in a high degree of aptitude for productive skills. At this stage this is an observation, which could be the subject matter of future research since motivation, the desires and needs of individuals, and other socio-economic factors, can be a strong drive in terms of language learning.

To sum up, our research constitutes a case study; hence, further research is needed to examine the effectiveness of similar programs in the preparatory and university stages, and to also take into account the learners' individual differences.

[8] The last five years a number of 60 students are enrolled at the Department of Modern Greek Language and Literature at the University of Belgrade.

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ГОВОРИТЕ ЛИ ГРЧКИ? СТУДИЈА СЛУЧАЈА СТУДЕНАТА НЕОХЕЛЕНИСТИКЕ

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Резиме

Предмет овог рада су продуктивне језичке активности у настави модерног грчког језика као страног на Филолошком факултету Универзитета у Београду. Теоријско-методолошки оквир нашег истраживања заснива се на приступу који у својим радовима заступају аутори Коен (Cohen 2011), Дорнеј и Скот (Dornyei and Scott, 1995), Елис (Ellis, 2005) и други. Наше истраживање састоји се из два дела. С једне стране, анализирали смо дидактичке приручнике који се користе у настави модерног грчког језика као страног на Б1 нивоу ЗЕОЈ-а, дакле, у раду са студентима друге године основних академских студија Неохеленистике, док смо с друге стране приказали резултате одређеног броја студената (укупно 22), чију смо писану и говорну продукцију тестирали за потребе писања овог рада. Циљ овога рада је да прикаже у којој мери студенти Неохеленистике користе исте стратегије и технике при увежбавању сваке појединачне продуктивне језичке активности. Такође, на основу спроведеног емпиријског истраживања, увидећемо који су то чиниоци који утичу на чињеницу да студенти не постижу исти успех када је реч о писаној и говорној продукцији. Поред анализираних приручника који се користе од 2012. године у настави интегрисаних језичких вештина, као и писане и говорне продукције студената друге године неохеленских студија, циљ рада је и да прикаже ставове студената који су посредством анкетног листића изнели своје мишљење у вези са типом вежби које су заступљене у три дидактичка приручника. Анализирани уџбеници и приручници користе се током наставе из Практикума из неохеленистике, а студенти Неохеленистике изнели су свој став само у вези са оним вежбама које се односе на развијање писаног и усменог дискурса. Анализа грешака насталих приликом тестирања писане и говорне продукције, те став студената Неохеленистике у вези са увежбавањем ове две веома важне језичке активности – представљају добро полазиште како за унапређење постојећих дидактичких материјала тако и за писање нових.

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HOTEL-PRODUCT PERCEIVED QUALITY: A CASE STUDY OF CITY HOTELS IN VOJVODINA (SERBIA) – A FACTOR ANALYSIS

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Abstract

Over the past two decades, many researchers, as well as hotel management, conducted surveys on visitor satisfaction with service quality of hospitality products. However, there is a lack of investigation of the perceived quality of hotels products in Vojvodina whose economy is still in the stage of adjustment to the new economic conditions due to the transition and ownership transformation. Thus, the aim of this study is to identify all the specific factors of hotel product and to point out the necessity of strengthening them in order to reach the level of satisfaction of customers of services provided. Data were collected from a sample of guests staying at various city hotels in Vojvodina (Serbia), rated with 1 up to 5 stars. Two types of analyses were performed to reach this objective: the exploratory factor analysis (EFA) and after that, the one-way analysis of variance (One-way ANOVA) with the view of determining a substantive effect of factors in different hotel categories. The paper identifies five major attributes as the most influential factors of the hotel product quality, i.e. front office services, employees, hotel facilities, restaurant service and the location of facilities. The discussion of findings leads to some suggestions on how to reach the hotel-product improvement and the specialization of hotels.

Key words: city hotels, hotel product, perceived quality, factor analysis, Vojvodina (Serbia).

ПЕРЦИПИРАНИ КВАЛИТЕТ ХОТЕЛСКОГ ПРОИЗВОДА: СТУДИЈА СЛУЧАЈА ГРАДСКИХ ХОТЕЛА У ВОЈВОДИНИ (СРБИЈА) – ФАКТОРСКА АНАЛИЗА

Апстракт

Многи истраживачи, као и хотелски менаџмент, бавили су се истраживањем задовољства гостију и квалитетом услуга хотелског производа. Међутим, постоји недостатак истраживања перципираног квалитета хотелског производа у Војводини и Србији, чија привреда се и даље прилагођава новим економским

условима пословања, што је резултат транзиције и процеса власничке трансформације. Дакле, циљ овог истраживања је да се идентификују сви специфични фактори хотелског производа и да се укаже на неопходност њиховог јачања да би гости били задовољни пруженим услугама. Подаци су прикупљени од гостију који бораве у различитим градским хотелима у Војводини (Србија), категорисаних у распону од 1 звездице до 5 звездица. Две врсте анализа су извршене да се постигне овај циљ: истраживачка анализа фактора (EFA) и анализа варијансе (једносмерна ANOVA), чијом применом би се утврдио суштински утицај фактора у различитим хотелским категоријама. Рад идентификује пет главних елемената као најутицајнијих фактора на квалитет хотелског производа: рецепција, запослени, хотелски садржаји, услуге ресторана и локација објеката. Дискусија резултата истраживања указује на предлоге како унапредити хотелски производ и на неопходност специјализације хотела.

Кључне речи: градски хотели, хотелски производ, перципирани квалитет, факторска анализа, Војводина.

INTRODUCTION

The mobility of tourism demand arises from the tourists' need to move to places where the service of their interest is offered. Thus, the main part of the tourist consumption usually occurs away from their place of residence and includes the spatial dispersion of service providers (Puciato et al, 2013). Nowadays, when ever changing patterns of customer needs and desires are visible in this competitive world, market research, as an inevitable tool for doing business, which acts as an aid in discovering new markets, helps understand the changing profiles of customers and also provides important information needed for new product development (Hodgson, 1990; Kozak & Baloglu, 2011). The hotel management's main responsibility lies in providing a high quality service and hotel-product to the customers (Su, 2004). Choi and Chu (2001) propose that in case hotels want to be successful in their business, they have to provide superior customer value in a continuous and efficient manner. Additional services of various types also may improve the competitiveness of hotels. All these issues are discussed by the tourists. If hotels want to develop positive customer experience, it is crucial to integrate various organization types such as marketing, operations, human resources, strategy, technology, social media and design (Kandampully et al., 2018). According to empirical evidence in related literature, we can emphasize that service quality and perceived quality of hotel-product have been well investigated. Over the past two decades, many researchers, as well as hotel management, have conducted surveys on visitor satisfaction in order to measure customer perception of quality attributes of the hotel and hospitality products. However, there is a lack of researches paying attention to the perceived quality of hotel industry in Vojvodina (Serbia) whose economy is still in the stage of adjustment to the new economic conditions due to the transition and ownership transformation. Therefore, modern hotel enterprises in Vojvodina do their business and

develop within a new market dynamics setting, and face challenges that require engagement of optimal managing that would pay attention to critical factors such as satisfaction of all participants in business (Vukosav & Curcic, 2009).

Consequently, the present study is developed using factor analyses, in order to find how hotel guests in city hotels examined the perceived performance of hotel facilities and services, as well as to improve their quality and the formation of product development strategy. The paper begins with an overview of literature on the importance of service quality, including evidence from the hotel industry. This is followed by the description of the research methods, the presentation and discussion on study findings, all in order to obtain relevant inferences, both for the theory and practice.

LITERATURE REVIEW

To form a hotel product practically means to achieve the consistency of the quality of its individual components and to provide harmonization in providing services by spatial and functional integration (Kosar & Raseta, 2005). A hotel-product is nothing more than one chain of services coming out from the wishes and requests of the consumers, i.e. the hotel guests. Theoretically, it is determined by "location-space and view, courts, objects, equipment, services, price and image," "experience of the guests as an effect, not the structure of a hotel product" and it may be concluded accordingly that "location-space and services" stand at the base of a hotel product, whereas the core external elements are "service prices and hotel image" (Krsmanović-Veličković, 2017). In contemporary hotel literature there is the notion of "total hotel product" which comprises three elements: purpose or the core of the product, formal, i.e. physical product and extended product (Kosar, 2015). The development of international hospitality industry is moving towards specialisation and standardisation. In that sense, there is the tendency of equal quality at core level, i.e. physical product of a certain rank. The space for building an authentic expression is observed in the extended product, i.e. the extended value for the customers. The definition of the term 'value' as the real combination of quality, needs, expectations and price highlights the third level of a product, i.e. its extended dimension. In the extended dimension of a hotel-product, there is the essence of the added value for the guest.

Many authors have given a definition of service quality as an integral part of the hotel product. Similarly, Lewis & Booms (1983) identified service quality as the measuring tool indicating how well the provided service matches the customers' expectations. Parasuraman, Zeithaml, & Berry (1985) designed a conceptual model of service quality in some industries and proposed five gaps within the model, with the fifth one being defined as "the quality that a consumer perceives in a service as a function of the magnitude

and direction of the gap between expected service and perceived service" (Parasuraman, Zeithaml & Berry, 1985).

In their model, the expected service describes the consumers' expectations of the service which a company should provide, and the perceived service reveals the consumers' feelings about the actually provided service. Service quality is the key issue for keeping the guests and also an indicator of the future economic activities (Blesic et al., 2009). Hotel selection and attributes that are important to the travellers have been thoroughly researched by the application of a variety of methods (Chu & Choi, 2000; Dolnicar, 2002). The perceived service quality emerges from the individual service encounter between the customer and the service provider. On that occasion, the customer evaluates the service quality and experiences either satisfaction or dissatisfaction (Bitner, Booms & Stanfield, 1990). Butanaru and Miller (2012) define the service as a dynamic event during which the customers and staff may influence each other in many ways. Satisfaction of hotel service users and the competitiveness of the hotel offer will be guaranteed in case the management has excellent knowledge of customer preferences and their evaluation of the hotel services, as well as the willingness to allocate funds for certain services (Roman & Martin 2016).

The awareness of the preferences of customers and the ability to be authentic with regard to the competition are critical success factors in the dynamic hotel market (Đorđević et al., 2016). The issues in providing high quality services that the hotel sector faces are high quality products creation and service delivery (Keating & Harrington, 2002). Hotel services delivery entails frequent encounters and interaction between the customers, staff and facilities (Lovelock & Wright, 1999) in which variability may be inherent and desirable. The management may be highly challenged in their attempt to balance the need for routine and standardization, on the one hand, with the need to treat customers as individuals, on the other. The aspects of service experience regarding basic hotel product have been ranked as the most important in the majority of the research, with the issue of cleanliness as the most important (Callan & Bowman, 2000; Knutson, 1988; Lockyer, 2002; Weaver & McCleary, 1991; Weaver & Oh, 1993). According to Weaver and McCleary (1991), 90% of business travellers ranked cleanliness as the most important aspect. Next to cleanliness there are other aspects of the core hotel-product, such as comfortable beds and rooms, and good-quality towels (Knutson, 1988; Weaver & McCleary, 1991; Weaver & Oh, 1993) that were also ranked as highly important. Further aspects of the hotel that were listed as being important for the process of selection included quality staff and service (Knutson, 1988; Lockyer, 2002; Weaver & McCleary, 1991; Weaver & Oh, 1993), safety and security (Knutson, 1988; Lockyer, 2002; Weaver &d McCleary, 1991), as well as some extra values such as free newspapers and cable TV (Weaver & McCleary, 1991; Weaver & Oh, 1993).

Currently, sustainable customer satisfaction remains one of the biggest challenges for managers in the hotel industry. Lu et al (2015) revealed that the guests conceptualize satisfaction in terms of value they received for the price of their accommodation. Relationships between the customers and the hotel that tend to be long-term and advantageous are becoming progressively important due to highly positive correlation between the guests' overall satisfaction levels and the probability of their return to the same hotel (Choi & Chu, 2001). The hotel that is committed to a service culture for its customers will grow with the tourists, and will not dwell on past achievements. If the hotel does not "change" with its customers, the customers will change their selection of a hotel (Maniu & Marin-Pantelescu, 2012).

Therefore, it is up to hotel managers to incorporate the perceived quality of service in their hotel product strategy and try to increase user retention that will help them to create, maintain, and sustain customer loyalty in order to eventually sustain competitive advantage (Ullah et al, 2016).

Hotels increase their investments intended for improving service quality and the perceived value of hotel products for their guests in order to achieve a better customer satisfaction and loyalty, as well as better the relationships with their customers (Jones et al., 2007). The perceived higher quality of hotel services leads to higher customer loyalty. If the loyalty of customers grows, it allows hotels to make savings by decreasing marketing costs, and positive communication by 'word of mouth' takes place instead. Moreover, the expenses of customers' change are lowered and the use of related products is increased (Jasinskas et al, 2016). The customers' experience of quality also has a significant effect on the increase in the number of returning customers. The quality of services that are provided by the hotel companies will be an important and useful factor in the recognition of hotels (Hosseini, 2015). The way in which customers perceive the quality of services they received is also important for managers since managers use it to develop or improve their own service quality standards with regard to the customers' evaluations and then direct employees to meet these standards (Dedeoğlu & Demirer, 2015).

METODOLOGY

Our investigation on the quality of hotel products of Vojvodina was performed from May until September of 2017. The initial research took place in 20 city hotels of different categories. In Serbia, there is the 5-star hotel rating (hotels from 1 up to 5 stars), but we have divided all the hotels in our research in 3 groups in the following way: select service hotels (with 1 and 2 stars), mid-price hotels (3 stars), and upscale/luxury hotels (4 and 5 stars). We made this division because among the tourists themselves (and the professional public) all hotels with 1 and 2 stars are perceived as a unique

group of select service hotels, then those with three stars as mid-price, and 4 and 5 star hotels as a separate group of upscale and luxury hotels.

The total of 420 guests participated in the research. Our questionnaire contains 2 groups of questions and respondents provided their attitude on the quality of the hotel-product. The first group of questions is related to the socio-demographic characteristics of the respondents, and the second part of questions related to 19 different elements of the hotel-product - elements based partly on the existing literature, and also on factors considered due to the specificities of the hotel-product of the city hotels in Vojvodina. On a Likert type five-degree scale, the respondents gave their opinion on each of the hotel-product element. For processing and analyzing the obtained results, the SPSS program and descriptive statistics were used. By factor analysis, specific factors of the city hotel-product of Vojvodina were isolated. In the sample of 420 respondents, 62.8% are male respondents, and 37.2% female respondents. In total, 64.3% of the respondents are domestic tourists (270), while foreign tourists amount to 35.7% of the sample (150 of them). Among the foreign tourists, there are tourists from 12 different countries, and their main motive of visiting is business (77%). For domestic tourists, the dominant motive of visiting is also business (48%), followed by recreation and leisure (29.2%). However, regardless of the dominance of the business motive, both the foreign and domestic tourists stay in hotels of all three groups equally (Table 1), in spite of the prejudice that business tourists, as well as the foreign ones, mostly stay in premium hotels.

Table 1. Number and percent of tourists according to categories of the hotel

		Hotel category			Total
		select service (1*2*)	mid price (3*)	upscale/luxury (4* 5*)	
Tourists	domestic	87	84	99	270
		32.2%	31.1%	36.7%	100.0%
	foreign	57	39	54	150
		38.0%	26.0%	36.0%	100.0%
Total		144	123	153	420
		34.3%	29.3%	36.4%	100.0%

Source: Authors' own calculations by using the SPSS software

With regard to the age structure, the sample is mostly made from respondents of the age between 26 and 35 (30%), and respondents of the age between 36 and 45 (29.9%), while younger than 26 and older than 46 make, respectively, approximately 15% of the sample; there are only 8.8% respondents older than 56. In the educational structure of the visitors, there are mostly highly-educated respondents (62.1%), then those with high-school education (31.4%), and 6.4% of the respondents didn't give any statement on their education. Considering their monthly income, only 6.6%

of foreign tourists have a monthly income less than 700 EUR, and 10.8% of the domestic tourists have monthly income higher than 700 EUR.

RESULTS AND DISCUSSION

Factor analysis was conducted with 19 value elements of the hotel-product of the city hotels because of higher order factor determination. Three (3) items in total were not suitable for analysis, so the final factor analysis was performed with 16 items. In this way, 5 factors with the characteristic root higher than 1 were separated. Factors were rotated by Viramx rotation, with Kaiser normalization. Five separated factors explain the 75.5% variances in total (Table 2).

Table 2. Extracted factors of the city hotel-product elements

Component	Initial Eigenvalues			Extraction Sums of Squared Loadings		
	Total	% of Variance	Cumulative %	Total	% of Variance	Cumulative %
1	5.701	35.632	35.632	5.701	35.632	35.632
2	2.390	14.939	50.571	2.390	14.939	50.571
3	1.832	11.451	62.022	1.832	11.451	62.022
4	1.121	7.007	69.029	1.121	7.007	69.029
5	1.036	6.475	75.504	1.036	6.475	75.504
6	.774	4.840	80.344			
7	.693	4.329	84.673			
8	.555	3.469	88.142			
9	.418	2.614	90.756			
10	.371	2.316	93.072			
11	.279	1.741	94.813			
12	.253	1.583	96.397			
13	.187	1.169	97.566			
14	.164	1.022	98.588			
15	.118	.739	99.327			
16	.108	.673	100.000			

Source: Authors' own calculations by using the SPSS software

The internal consistency of the measuring instrument (with 16 items) was confirmed by the obtained Crombach alpha (α = .859), and obtained KMO (Kaiser-Meyer-Olkin Measure of Sampling), which assures the adequacy of sampling, and it amounts 0.774.

Five separated factors of the hotel-product presented in Table 3 show similarity with the factors of higher order, obtained in recent research of different destinations. Emir & Kozak (2011) state the following factors: front office services, employees, housekeeping, and food and beverage services. LeBlanc & Nguyen (1996), in particular, examined the five hotel factors that

may signal a hotel's image to travellers. These five factors were: physical environment, corporate identity, service personnel, quality of services and accessibility. Wilkins et. al. (2007) state three big groups of factors: physical product, service experience and the quality of food and beverage. Worsfold et al. (2016) investigated the key points of customer satisfaction and correlated them with the physical attributes of a hotel finding that these are significantly more connected with the intention of guests to return than satisfaction with the received services. In this research, the first obtained factor, F1, provides information on the hotel staff, and it covers items of efficiency and hospitability of the staff. This is not strange if we take into consideration the vast body of research, as well as relevant literature, that human resources are underlined as one of the most important value of the hotel-product of city hotels. The second isolated factor, F2, is called Hotel Facilities, and it covers items such as Entertainment Hotel facilities, Other Hotel Facilities and Other Services Offered by Hotel (the content outside of property which may be offered by the hotel to its visitors, for example excursions, visits, different happenings, etc). This factor is known in literature as one of undisputed value of the hotel-product, and in some cases, one of the most important and the most attractive elements (Chu & Choi, 2000; Wilensky & Buttle, 1988). The third factor isolated in this analysis, the factor, F3, is called the Food and Beverage, and it covers the following items: Food and Beverage Quality, Service in Food and Beverage and Efficiency of Food and Beverage Staff. It is interesting that the visitors saw the restaurant as a separate factor of the hotel value, practically as a subset of products, services and human resources within the whole (hotel) set of these elements. Moreo et al. (2019) described that customers in restaurants not only want the good food properly served, but also want it to be served with a smile. Customers expect to feel that the staff is genuinely happy to deliver services them. The fourth factor (F4), called Reception, is made of items called Availability and Intelligibility of Informative Facilities and Notices on the Reception Desk, as well as Information, Expertise and Attitude of Reception Staff. Despite the fact that hotel services are intangible, the hotel frontline employees may also render "tangible services" while directly interacting with their customers (Gonzalez & Garazo, 2006; Harris, 2012; Kusluvan et al., 2010). It is for this reason that frontline employees are the critical elements of service quality.

The same as the factor Food and Beverage, the factor Reception is practically a separated entity. Also, a very important component of this factor is its informative purpose, so the factor Reception is partly related to information and the availability of information to the visitors of the hotel. The last separated factor, F5, is Location, i.e. the value of the hotel location itself, recognized in earlier research and literature as an important and standard element of the value of the entire hotel-product. Lewis & Chambers (1989) perceived location as the most important factor which influences the selection of a hotel. Also, Tsaur & Tzeng (1995) gave

evidence on hotel location factors, including the convenience of transportation and parking, which were highlighted as the most important factors in the assessment process of the service quality of a hotel.

Table 3. Factors of city hotel product of Vojvodina, isolated by the factor analysis

Factors/items	Factorial saturation	Percentage of explained variance	Crombach's α
F1 - The hotel staff		35.632	.882
F1a Staff efficiency	.890		
F1b Staff hospitability	.865		
F2 - Hotel facilities		14.939	.898
F2a Entertainment facilities in the hotel	.866		
F2b Other facilities in the hotel	.877		
F2c Other services offered and provided by the hotel	.821		
F3 - Food and Beverage		11.451	.833
F3a Quality of the food and beverage	.779		
F3b Service in the food and beverage	.910		
F3c Efficiency of food and beverage staff	.882		
F4 - Reception		7.007	.820
F4a Availability and intelligibility of informational facilities and notices at the reception desk	.843		
F4b Information, expertise and attitude of the reception desk	.821		
F5 - Location	.801	6.475	

Source: Authors' own calculations by using the SPSS software

The results of descriptive statistics of estimation for all 5 isolated factors of the city hotel-product of Vojvodina are showed in the Table 4.

Table 4. Indicators of descriptive statistics for 5 isolated factors.

	N	Minimum	Maximum	Mean	Std. Deviation
F1 staff	420	2.50	5.00	4.70	.50784
F2 facilities	390	1.00	5.00	2.96	1.05032
F3 food and beverage	393	1.67	5.00	4.54	.64627
F4 reception	408	2.50	5.00	4.26	.66928
F5 location	420	2.00	5.00	4.61	.63001
Valid N (listwise)	366				

Source: Authors' own calculations by using the SPSS software

As seen in Table 4, four of five isolated factors were estimated as very satisfying, with the average score below 4. It was only factor F2, which is related to facilities offered by the city hotels in Vojvodina, that

was marked with a lower score (M=2,6). According to scores, it can be noticed that (no matter what category) those hotels have satisfactory elements of product quality. The best rated factor, i.e. the highest quality of the hotel product of Vojvodina, have human resources (M=4.70), as well as a location of hotel (M=4.61). Based on these results, it is possible to conclude that the employees in hotels in Vojvodina are extremely professional in doing their job and that they manage to satisfy most of the expected guests' needs. Also, locations of hotels are satisfactory and they reflect positively to the total quality. Hotel restaurants are also rated as satisfactory and they also reflect positively to the hotel product quality. Reception, as a separated factor, was rated with an average rate of 4,26 which means that it covers all needs, especially for information, but such an average rate shows that there is a significant space for improvement for the reception services performance on the whole, primarily in the sense of better informing the visitors relating to a variety of questions. The lowest average score (M=2.96) being more on the side of dissatisfaction than on satisfaction of the visitors, pertains to the factor called Hotel Facilities. It is well known that this hotel-product quality element makes a big influence to the total value and satisfaction of the visitors; it is very important to pay more attention, in the future, on the improvement and expansion of the range of facilities offered by city hotels in Vojvodina. The prominent feature of tourism and hospitality industry is their strong relationship with the entire offer of the tourist destination in which the business objects are located and the hotel-product created. High mutual dependence is caused by market features mostly in the sense of promotion and sale, as well as the demand of the customers for an integrated tourism product where the hotel product is the core part. Tourists arriving to Vojvodina for business or tourism purposes are oriented towards a variety of content provided by certain enterprises in the tourism industry within the destination. Thus, the management of the hotels and the development of the hotel-product have to be integrated into the framework of the development of Vojvodina as a tourist destination. In that sense the cooperation between all stakeholders in Vojvodina is indispensable. The lack of a managerial system and the coordination of the operations for all participants in the tourist destination lead to insufficient competitiveness of the tourist product in Vojvodina. Therefore, it is necessary to introduce the tourism management system of development through destination management at the provincial level.

So far, it has been determined that the three of five elements of the city hotel-product quality in Vojvodina are rated by the visitors as very satisfactory (F1, F5, F3), one factor as satisfactory (F4), and one doesn't meet the needs of the tourists in the best manner, and doesn't provide enough quality (F2).

THE STATISTICS OF MAKING CONCLUSIONS – THE OBTAINED FACTORS OF THE HOTEL PRODUCT QUALITY IN RELATION TO HOTEL CATEGORIES

Following the survey, we have worked on the possible correlation between any statistically significant differences in estimation of the city hotel-product value factor among hotels of different categories, i.e. price tiers. For this type of analysis the F-test/ANOVA is used. Using this method enabled us to determine categories of hotels in which certain factors of quality should be improved.

By the application of a one-way analysis of variance (One-way ANOVA), it has been found that in hotels of different categories, there are statistically important differences in the rates of all factors of the hotel-product value (Addendum 1, Table 1).

The factor F1 – Staff, although for hotels of all categories has been rated as the most valuble, shows statistically significant differences in average scores of hotels of different categories (F=9.108; df=2; Sig.=0.000). Applying the Post Hoc LSD test, it was determined that the staff of upscale/luxury hotels was rated significantly better (M=4.92) than the staff of mid-price hotels (M=4.52) and select service properties (M=4.60).

The second factor (F2- Facilities), also shows significant deviation in average rate among hotels of different categories, which leads to the much higher estimation of the facilities' quality in upscale/luxury hotels (M=3.82) in comparison to those in the mid-price range (M=2.84) and select service hotels (M=2.27), while, at the same time, facilities of select service hotels were statistically rated lower than those of mid-price hotels.

Using analysis of the food and beverage estimated value as a factor of the hotel-product value, there two subsets of data are obtained. The first one contains average rates of upscale/luxury restaurants (M=4.79) and mid-price hotels (M=4.60), which are statistically better estimated than restaurants in select service properties (M=4.27).

Reception (F4), as a factor, is much better and of greater quality in upscale/luxury hotels (M=4.50) in comparison to mid-price (M=4.10) and select service hotels (M=4.01), which don't have any significant differences between themselves.

It is very interesting that location (F5), as a factor of the hotel product quality, statistically is rated much better in mid-price hotels (M=4.95), in comparison to upscale/luxury (M=4.61) and select service hotels (M=4.39), whose locations were estimated as equally attractive, and without statistically significant difference. The implications of these results is the following: mid-price hotels, mainly built during the 1960's and 1970's, when Vojvodina was in economic growth, imply that most of the city hotels in Vojvodina have extremely favourable location in the most frequent locations (such as the urban centres).

This analysis tells us that upscale/luxury hotels, in all factors of the hotel product quality (except location) are rated the highest, while select

service hotels' all factors of hotel-product quality are rated the lowest. Mid-price hotels have the best locations in relation to hotels of other price tiers, and restaurants in them are rated very highly.

In upscale/luxury hotels (4 and 5 stars), the best rated factors are human resources and the restaurant. Reception service, especially in the sense of information providing is also a well estimated factor; however, it is necessary to follow continuously the visitors' needs and to be ready for adequate adjustments. Considering the location of upscale/luxury hotels, every change is practically impossible, but it is possible to directly affect the environment of the facility itself, and to try to improve at least that segment, in relation to the ambient, hygiene, external appearance and other possible aspects of the space directly surrounding these properties. The weakest points of all city hotels in Vojvodina are the facilities in the very hotels, as well as the additional services offered by the hotels. There is significant space for improvement, and it is necessary to approach this problem very seriously, especially concerning upscale/luxury hotels where the visitors have high expectations from this factor of quality. Every hotel enterprise which tends to have successful business has to orient their business operations towards achieving and maintaining high service quality. The hotels operating within a hotel group have a clearly defined relationship between brand and quality, which is also an important factor in perceiving service quality of such objects by the customers. Moreover, high and precisely defined standards in providing hotel services decrease the gap between the expected and the perceived service quality. In order to achieve and maintain the quality of their hotel product independent hotels must also tend to apply standards in their business. Standards that are applied, from the building and equipping the object, to the control and management processes, ensure the quality base and minimize improvisations and irrational business activities, and even improve the value and quality of the product.

Mid-price hotels (3 stars) have the highest scores for location and that is their significant advantage. This factor should be especially emphasized in the promotional activities and used as the most important "attracting" factor for the visitors. Food and Beverage in mid-price hotels are a very important factor of the product value which gives us a good starting point for forming a typical Vojvodina hotel-product, taking into consideration that Vojvodina is building its image of the destination with excellent gastronomy, as well as a region of very beautiful natural and ambient values. A good location, in beautiful surroundings, with excellent restaurants may create a great base for a good image, but also for improvement of other factors of quality, primarily the facilities.

Select service hotels (1 and 2 stars) are not considered as the hotel products from which we can expect much. However, even in this tier, all factors of quality (except for facilities) have been rated by the visitors as satisfactory, but there is space for improvement of the reception service and food and beverage. Facilities are considered as a weak factor of select

service hotels, especially because it is not expected from these hotels to offer many attractive facilities to the visitors. However, there are some possibilities for involving some additional facilities which do not require big space and investments, but creativity. In that sense, the market should be researched; in creating business policy of a hotel, it is very necessary to aim for the specialization of the facilities, which means focusing on the narrower segments of the demand, offering an adjusted and adequate product. If we compare hotels that have undergone the owner transformation process (mostly mid-price hotels) to other hotels in town centres in Vojvodina, we may detect certain differences in management types and business orientation between the two groups of hotels. The greatest problems of the public sector hotels and state-owned hotels are the poor allocation of resources, insufficient innovation aimed at improving the quality of the hotel-product, market behaviour and the management of total enterprise activities, as well as the total lack of the ability to adapt to the changes of the tourist market, especially with regard to the changes and requirements in terms of the tourist demand. Those hotels continue to focus on the hotel service and processes of rendering the service contrary to the contemporary trends that direct towards customers and their preferences.

CONCLUSION

In the present research, the factors, "hotel facilities", "employees", have been isolated as individual elements, which means that they deserve special attention and harmonization with other isolated elements (location, reception, restaurant) in order to create a complete picture of the hotel-product capable of satisfying all the expectations of the guests. Our findings indicate that a small number of hotels offer guests services outside the properties in cooperation with certain cultural and other institutions, and it is considered to be the weak point in market positioning of the total accommodation offer. On the other hand, the factor of hotel staff is the best valued element of hotel-products. The results of the research indicate that high category hotels have been estimated as higher quality according to 4 quality factors of the hotel-product (staff, facilities, restaurant, reception), whereas low category hotels, in all quality factors of the hotel-product, have been estimated with a lower rating. Moreover, the medium category hotels occupy the best locations in town centres in contrast to the hotels of other categories. The restaurants in medium category hotels have also been estimated as high quality. The processes and the complexity in the tourist market require the management of hotel enterprises in Vojvodina to make a continued effort in finding new strategies, innovations and to create new elements of the city hotel-product, as well as make adjustments to the strategy so as to adapt to new tendencies which would enable them to respond to any new tourist-requests, and to keep and improve the position in

the market, as well as to respond successfully to the competitive pressures and challenges.

After the ownership transformation process, all hotel enterprises in Vojvodina still have not found their place in the tourist market because the city hotels' offers may be seen as too "something for all". In contemporary business conditions, it is imperative to specialize hotels in accordance with the target group. The facts considered as very important in the process of the hotel-product adjustment to the tourist demands are investments, education and the specialization of the existing staff, especially the managing structures. The research that has been conducted for this paper has certain limiting factors, i.e. restrictions. First of all, the respondents' answers may be taken as based on their subjective estimation. Since the questionnaire was anonymous, the impact of subjectivity was diminished, however there is also the factor of the social desirability bias of the respondents. Furthermore, there is the impact of the cultural, social and economic differences regarding the origin of the respondents (Slovenia, Croatia, Serbia, Montenegro, Italia, Austria, Russia, etc.), and there are also restrictions regarding the interpretation of the results due to the variety of perceptions of certain services which emerged under the influence of these differences. On the one hand, the restrictions of the research refer to the lack of any previous research in Vojvodina (Serbia), thus the results of the conducted research could not be compared the any pre-existing data. On the other hand, this is, at the same time, the advantage of the conducted research since it is the very first research dealing with the influence of the perceived quality of service in city hotels in Vojvodina (Serbia).

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ПЕРЦИПИРАНИ КВАЛИТЕТ ХОТЕЛСКОГ ПРОИЗВОДА: СТУДИЈА СЛУЧАЈА ГРАДСКИХ ХОТЕЛА У ВОЈВОДИНИ (СРБИЈА) – ФАКТОРСКА АНАЛИЗА

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Резиме

Многи истраживачи бавили су се истраживањем хотелског производа и његовог квалитета, но мали је број истраживања која су на ову тему спроведена у Србији и Војводини. У овом тренутку процеси и сложености на туристичком тржишту, након транзиције, власничке трансформације и економске кризе у нашој земљи захтевају од менаџмента хотелских предузећа непрекидан и континуирани напор ка изналажењу нових стратегија, иновирању и стварању новог туристичког производа, прилагођавању стратегије новим тенденцијама како би у потпуности одговорили новим захтевима туриста, одржали и унапредили позицију на тржишту и успешно одговорили конкурентским притисцима и изазовима. Истраживање на тему квалитета хотелског производа Војводине вршено је у периоду од маја до септембра 2017. године. Истраживање је спроведено у 20 градских хотела различитих категорија на територији читаве Војводине. У истраживању је учествовало 420 испитаника. Испитаници су се изјашњавали о свом виђењу квалитета градског хотелског производа на анкетном упитнику, који је садржао две групе питања. Прва група питања односила се на социо-демографска обележја испитаника, а други део упитника чинио је списак питања која су истраживала 19 различитих елемената хотелског производа, одабраних прегледом литературе, али и увидом у неке специфичности хотелског производа у самој Војводини. На петостепеној скали Ликертовог типа испитаници су се изјашњавали посебно о сваком од елемената хотелског производа. За обраду и анализу коришћен је SPSS програм и дескриптивна статистика. Факторска анализа спроведена је са 19 вредносних елемената хотелског производа Војводине ради утврђивања фактора вишег реда. Укупно три ајтема нису била погодна за анализу, те је коначна факторска анализа извршена са 16 ајтема. На овај начин издвојено је 5 фактора са карактеристичним кореном већим од један. То су: особље хотела, хотелски садржаји, ресторан, рецепција и локација. У постојећем истраживању фактори хотелски садржаји и запослени су се издвојили као засебан елемент, што значи да ови елементи хотелског производа заслужују посебну пажњу и усклађивање са осталим елементима да би укупна слика хотелског производа задовољила очекивања туриста. Аутори закључују да веома мали број хотела нуди садржаје гостима изван објекта, као и у оквиру објекта, што представља слабу тачку у позиционирању укупне смештајне понуде на туристичком тржишту. Након спроведеног процеса својинске трансформације, хотелска предузећа у градовима Војводине још увек „лутају" на туристичком тржишту тражећи своје госте, јер досадашња понуда градских хотела у Војводини била је у складу са изразом „за сваког по нешто". У савременим условима пословања мора се ићи ка што ужим сегментима тражње, уз неопходну специјализацију објеката у складу са циљном групом. Оно што се сматра за значајно у прилагођавању хотелског производа туристичкој тражњи јесу инвестиције, као и едукација и усавршавање постојећег кадра, поготово менаџерских структура.

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AN INTEGRATED DEA/AHP METHODOLOGY FOR DETERMINING THE CRITERIA IMPORTANCE IN THE PROCESS OF BUSINESS-FRIENDLY CERTIFICATION AT THE LOCAL LEVEL

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Abstract

The key problem in the application of multi-criteria decision methods is to determine the importance of the criteria. That is the reason for the developing of a number of approaches for its calculation. Most of the used classifications divide them into two groups: subjective and objective. This paper presents an integration, an analytic hierarchy process (AHP) method as a subjective one, and the data envelopment analysis (DEA) method as an objective approach. The basic idea in the proposed procedure is to introduce objectivity into the process of criteria importance derivation with AHP by taking into account the weight obtained by DEA efficiency evaluation after introducing subjectivity in DEA, with an expert opinion.

Key words: Multi-criteria decision, criteria weights, business-friendly certification, AHP, DEA.

ЈЕДНА ИНТЕГРИСАНА ДЕА/АХП МЕТОДОЛОГИЈА ЗА ОДРЕЂИВАЊЕ ЗНАЧАЈА КРИТЕРИЈУМА У ПРОЦЕСУ ПОСЛОВНО-ПРИЈАТЕЉСКЕ ЦЕРТИФИКАЦИЈЕ НА ЛОКАЛНОМ НИВОУ

Апстракт

Кључни проблем у примени вишекритеријумских метода одлучивања јесте утврдити важност критеријума. То је разлог за развој пуно приступа за њихов прорачун. Већина коришћених класификација дели методе на две групе: субјективне и објективне. У овом раду представљен је један метод њихове интеграције, метода аналитичке хијерархије (АХП), као метода субјективне анализе, те метода анализе

података (ДЕА), као објективног приступа. Основна идеја у предложеној процедури је увођење објективности у процес прорачуна важности критеријума са АХП методом узимајући у обзир тежине добијене помоћу процене ефикасности ДЕА методом пошто је претходно већ уведен субјективитет у ДЕА методу помоћу експертског мишљења.

Кључне речи: Вишекритеријумско одлучивање, тежине критеријума, пословно-пријатељска цертификација, АХП, ДЕА.

INTRODUCTION

For solving the uneven economic development in all of the municipalities in one country, we can involve the initiative to create a friendly business environment in the municipalities which can be achieved by identifying, and then presenting, the comparative advantages of the individual municipalities, with expected results - direct, reflected in the growth of investments, and indirect, increasing the living standards (Radukic, Stankovic & Popovic 2012; *Bfcsee*, 2014). This task can be realized through the certification of cities and municipalities in which one of the most important tasks must be the determining of the significance of the criteria.

For solving this task, we have subjective assessments using the preference of authorities responsible for conducting certification, and another way is to define the objective approach based on the application of quantitative methods. It is important to notice that in the last few years, there has been a trend of integrating different methods of these two groups (Liu, 2003; Wang, Liu & Elhag, 2008; Ramanathan, 2006, etc.), where the contributions of the authors of this paper is seen in their papers (Savić, Makajić-Nikolić, Ranđelović, Ranđelović, 2013; Ranđelović, Ranđelović, Savić Makajić-Nikolić, 2013).

The subject of this paper is the evaluation of the business-friendly certification (BFC) process in 21 cities of the Republic of Serbia for which task authors propose one procedure which integrates the data envelopment analysis (DEA) as objective, and the analytic hierarchy process (AHP) as the subjective approach, with the main objective being to improve the mentioned BFC process. For this task, theauthors hypothesized that there is no significant difference between the results obtained by the proposed method and the expert determination of the importance of particular criteria.

LITERATURE REVIEW

The problem of weight determination in MCDMs has existed since the formulation of the first MCDM (in Hwang, Yoon,1981; Saaty,1994; Zionts, 1992). As already mentioned, for the determination of the criteria importance, we have subjective approaches that reflect subjective judgment, and objective approaches which use mathematical methods (Ma, Fan, Huang, 1999). The most popular subjective approaches are AHP (Saaty, 1977; Saaty,

1980; Saaty, 1994),the method of least squares comparison (Bozoki, 2008), the Delphi method (Sinuany-Stern, Abraham,Yossi, 2000; Seifert, Zhu, 1998), etc. The objective approaches include methods such as the linear programming techniques for the multidimensional analysis of privileged (LINMAP), various computer-aided mathematical models (Li, Chen, Huang, 2013), DEA (Podinovski, 1999; Charnes, Cooper, Rhodes, 1978; Banker, Charnes, Cooper, 1984; Cooper, Seiford, Tone, 2000), the entropy method (Shannon, Weaver, 1947; Ginevičius, Podvezko, 2004), the multi-attribute programming methods (Jahanshahloo, Zohrehbandian, Abbasian-Naghneh, 2011), the principal component analysis (Chen, Bai, 2013), etc.

In literature, we can find several methods for weight derivation which combine objective and subjective approaches, such as in Shang and Sueyoshi (1995) where the authors investigated excesses in Chinese industrial productivity in the period 1953–1990 by combining the DEA with other management scientific approaches among which was the AHP method. The weighed constant returns to scale (CRS), and the additive DEA model was used where the weights were obtained through expert opinion by the AHP approach. Their study showed that DEA could be combined, i.e. integrated with the AHP method to yield more valid results. In some papers we see that AHP was used first for handling subjective factors and for the generation of a set of numerical values, and then the DEA was used for identifying the efficiency score based on the entire data, including those generated by the AHP (Yang, Chunwei, 2003).

In research of Doyle and Green in 1993., the DEA was applied on pairs of units, and the resulting DEA scores were used for generating a pair-wise comparison matrix, and at the end, the AHP was applied to generate weights of units from the matrix. The AHP/DEA methodology for the facilities layout design problem was presented in research of Yang and Chunwei in 2003, so that the AHP was applied to collect the qualitative performance data, and the DEA was employed to identify the performance frontiers ordering the final candidate layout alternatives. Also, the AHP has been used to introduce preference information in the DEA calculations by Seifert and Zhu in 1998. One type of The AHP method – voting AHT method for supplier selection was presented in research of Liu and Hai in 2005, where the AHP determines the weight of criteria by voting and the DEA method was used for the aggregation of votes for each of the criteria received in different ranking places into an overall score for each individual criteria. In the research done by Ramanathan in 2006, the DEA generates local weights of alternatives from the pairwise comparison judgment matrices of the AHP and in research of Wang, Liu and Elhag i 2008) we have the integration of the DEA and AHP to prioritize the bridge structure considering the risk.

METHODS

The authors of this paper propose one procedure which integrates the DEA and AHP approaches.

Deriving Measures of Criteria Importance Using AHP Method

The AHP is one of the most widely used decision-making methodologies in the world today. The AHP method is generally accepted in application (Saaty, 1994), as previously mentioned, because of its role in determining the weights in MCDM models.

The AHP is defined through a set of axioms that delimit the scope of the problem environment in reference (Saaty, 1994) as a multi-criteria analysis method. The mathematical foundation is a theory of consistent matrices and the ability of eigenvectors to generate true or approximate weights (Saaty, 1980). The AHP algorithm makes a comparison of criteria, or alternatives with respect to an observed criterion, in pairwise mode. As a tool for pairwise comparison, the AHP uses a fundamental scale of absolute numbers (from 1 to 9) that has been widely accepted in practice and validated by many different experiments in the field of decision theory. This scale has to be a scale that quantifies individual preferences with respect to quantitative and qualitative attributes just as well or better than other scales as was described by Saaty in 1977.

According to Saaty (Saaty, 1980), the AHP was founded on three design axioms: (i) the decomposition of the goal-value structure where a hierarchy of criteria, sub-criteria, and alternatives is developed, with the number of levels determined by the problem characteristics; (ii) the comparative judgments of the criteria on single pairwise comparisons of such criteria with respect to an upper criteria; and (iii) the linear-based synthesis of priorities where alternatives are evaluated in pairs with respect to the criteria on the next level of the hierarchy, and criteria can be given a priority (e.g. preference) expressed as a weight in the AHP matrix.

The problem is defined as a general problem of multi-criteria analysis where it is necessary to evaluate the m of available alternatives A_m on the basis of n relevant criteria C_n.

On the stage of decomposition, the problem is viewed as a hierarchical structure, where the goal is on the top, while the criteria by which a decision is made are treated at the lower levels. At the lowest hierarchical level, there is a range of alternatives, whose comparisons it is necessary to make. The next phase involves collecting data and peer evaluation. First of all, the pair-wise comparison of criteria and alternatives is made at a given level of hierarchy, but also in relation to the criteria of the directly higher level. The pairwise comparison of alternatives is done in response to the question of which of the two observed attributes that

characterize an alternative to the given criteria is better in terms of meeting the criteria and its contribution to the certain objective. The strength of preference is expressed by the ratio scale with increments of 1-9. The preferential level of 1 shows equality of observed attributes, while the level of 9 indicates absolute, the strongest preference of one attribute over another (Forman, 1990; Cooper, Seiford, Tone, 2006). The result of the AHP application can be used to compare the importance of the criteria, as well as the rank of alternatives.

Based on pairwise comparison, the reciprocal matrix (dimension $n \times n$ on the level of criteria, or m x m on the level of alternatives) can be formed, where the elements $a_{ii} = 1$, while the elements a_{ji} are the reciprocal of the elements a_{ij}, i.e. $a_{ji} = 1/ a_{ij}$, $i \neq j$ and i, j = 1, 2, ..., n. Another important issue when it comes to pairwise comparison is the consistency of decision maker preferences. Namely, if the consistency is perfect then the following is fulfilled: if criterion C_x is equally important to another criterion C_y ($x \neq y$ and x, y {1, 2, ..., n}) than the pairwise comparison matrix will contain value of $a_{xy} = 1 = a_{yx}$, and at the same time the criterion C_y is absolutely more important than the criterion C_z and the pairwise comparison matrix contains values $a_{yz} = 9$ and $a_{zy} = 1/9$ ($y \neq z$ and y, z {1, 2, ..., n}), then the criterion C_x should also be absolutely more important than the criterion C_z i.e. $a_{xz} = 9$ and $a_{zx} = 1/9$ see (Leskinen, 2000; Ma, Zhang, 1991). However, the decision maker is often not able to express consistent preferences in case of several criteria. The Saaty's method for measuring the inconsistency of the pairwise comparison matrix can be understood as explaining that in an ideal case when the comparison matrix (A) is fully consistent, the matrix rank (A) is equal to 1, and its eigenvalue λ is equal to n, i.e. to the number of criteria.

Consistency index (CI) and the consistency ratio (CR) can be calculated as it is given in (Cooper, Seiford, Tone, 2000):

$$\mathrm{CI} = \frac{\lambda_{\max} - n}{n-1} \tag{1}$$

$$\mathrm{CR} = \frac{CI}{RI} \tag{2}$$

The RI is the random index representing the average value of CI in randomly generated pairwise comparison matrix using the Saaty scale obtained by Forman and Saaty, and accepts a matrix as a consistent one only if CR < 0.1, as it was presented by Forman in 1990. And by Alonso and Lamata in 2006.

DERIVING MEASURES OF CRITERIA IMPORTANCE USING DEA METHOD

As is known, the DEA has been widely used for evaluating the relative performance of similar DMUs with multiple inputs and outputs. The original efficiency definition given in papers of Li, Chen and Huang in 2013. generalizes the single-input to single-output ratio in the definition of efficiency as the ratio of the sum of the weighted outputs, to the sum of the weighted inputs. Suppose that DMU_j (j=1,…,n), within a set of n units, uses inputs x_{ij} (i=1,…,m) to produce outputs y_{rj} (r=1,…,s), the absolute efficiency measure model is as follows (Podinovski, 1999):

$$E_j = \frac{\sum_{r=1}^{s} u_r y_{rj}}{\sum_{i=1}^{m} v_i x_{ij}} \tag{3}$$

where v_i (i=1,…,m) are input multipliers and u_r (r=1,…,s) are output multipliers (weights).

The above definition corresponds to a discrete MCDM. The determination of weights is a very sensitive and complicated process. The weights selected a priori, as in MCDM models, can significantly affect the results of the efficiency calculation. Following that idea, the authors of the DEA model in reference (Charnes, Cooper, Rhodes, 1978) allowed each DMU to choose the most appropriate set of weights in order to become as efficient as possible in comparison with the other units in the observing set. The relative efficiency ratio is scaled between 0 and 1, and all efficient units have the same ratio equal to 1. The linear programming (LP), the weighed form of the basic constant return to scale model is as follows:

$$(\max) \mathrm{h}_k = \sum_{r=1}^{s} u_r y_{rk} \tag{4}$$

such that

$$\sum_{i=1}^{m} v_i x_{ij} = 1 \tag{5}$$

$$\sum_{r=1}^{s} u_r y_{rj} - \sum_{i=1}^{m} v_i x_{ij} < 0,\ j = 1,...,n \tag{6}$$

$$v_i \geq \varepsilon,\ \mathrm{i} = 1,...,\mathrm{m}\ ;\ u_r \geq \varepsilon,\ \mathrm{r} = 1,...,\mathrm{s} \tag{7}$$

The optimal values of efficiency scores h_k are obtained by solving the linear model given with equations (4) - (7) n - times (once for each DMU in order to compare it with other DMUs). As a solution of basic CCR based on DEA models (Charnes, Cooper, Rhodes, 1978), efficiency score h_k is 1 for all efficient units and lower than 1 for all inefficient units. All inefficient units are enveloped by production frontier, consist of efficient

DMUs, and for each of them an analyst could find the benchmark (real–efficient or virtual-composite peer unit lying on the efficiency frontier) (Banker, Charnes, Cooper, 1984).

In researchof Ramanathan from 2006. it is claimed that, when the DEA is used for aggregation, the importance measures of the criteria are automatically generated by the DEA as the values of multipliers using linear programming. In that study, a simple DEA model with one dummy input is used to get the composite weights of alternatives (DMUs). In this paper, we obtained the following weight matrix:

$$Z = \left[z_{ji} \right]_{n \text{ x } (s+m)} = \begin{bmatrix} u_{11} \ldots u_{1s} & v_{11} \ldots v_{1m} \\ & \vdots \\ u_{n1} \ldots u_{ns} & v_{n1} \ldots v_{nm} \end{bmatrix} \tag{8}$$

where z_{ji} are the weights of decision alternatives, DMUj (j = 1,. . . ,n), with respect to the criterion i (i= 1,. . . ,s+m).

THE AGGREGATION COMPOSITE WEIGHTS FOR THE CRITERIA IMPORTANCE

Having in mind that this paper will consider the case study with a significantly large number of input, the criterion which can be perceived as the output criterion in suitable inverted DEA model and the proposed theorem in the research of Ramanathan in 2006., the authors propose that the composite weights calculation should include the subjectively obtained local weights ω_i^* each of which would represent the output criterion and matrix Z^* as follows:

$$Z^* = \left[z_{ji} * \right]_{n \text{ x } (s+m)} = \begin{bmatrix} u_{11} \ldots u_{1s} & v_{11} \omega_1^* \ldots v_{1m} \omega_m^* \\ & \vdots \\ u_{n1} \ldots u_{ns} & v_{n1} \omega_1^* \ldots v_{nm} \omega_m^* \end{bmatrix} \tag{9}$$

where subjective weights can be given as simple judgements of experts, as it is applied in the proposed case. Additionally, they can be obtained with certain subjective methods (as for example the AHP).

The average importance values for each criterion can be calculated based on the given matrix

$$\overline{Z}_i^* = \sum_{j=1}^{n} z_{ij} * \text{ , n,i=1,...,s+m} \tag{10}$$

The composite relative weights represent the normalized value of $\overline{Z}_i^*$, i=1,...,s+m.

RESULTS

In Serbia, the BFC process has been carried out since 2007 and it is implemented by the Serbian National Alliance for Local Economic Development (NALED) in 21 cities and municipalities in Serbia that have completed this process successfully. The relevant criteria for BFC in the cities of Serbia, according to NALED's methodology are (Naled-Serbia, 2012; Certification program business-friendly municipality, 2012):

C1: The strategic planning of local economic development in partnership with businesses
C2: The special department in charge of the local economic development (LED), FDI promotion and business support - existence of LED Office
C3: The business council for economic issues – the advisory body to the local governments
C4: The efficient and transparent system for acquiring construction permits
C5: The economic data and the information relevant for starting and developing a business
C6: The multilingual marketing materials and website
C7: The balanced structure of budget revenues and/or debt management
C8: The investment into the development of the local workforce
C9: The cooperation and joint projects with local business on fostering LED
C10: The adequate infrastructure and reliable communal services
C11: The transparent policies on local taxes and incentives for doing business
C12: The electronic communication and on-line services

The BFC process is an iterative procedure which consists of the steps given in Figure 1. The importance of the criteria w_j is defined as the average score of the previous level of evaluation and as such can be called the relative importance of observed criteria C_j, j = 1,2,.., n. The data about the significance evaluation of all the relevant certification criteria in the model, according to the methodology, as applied by the local and state governments, in this particular study for the certification of 21 cities in Republic of Serbia, are given in Table 1. Since multi-criteria analysis models include the application of weights such as $\sum_{j=1}^{n} \omega_j = 1$, where ω_j is weight that expresses the relative importance of the criteria C_j, j = 1,2,..,12, the results generated by the methodology of the local governments must be adapted by using the appropriate additive normalization like in Table 1 (Naled-Serbia, 2012; Savić, Makajić-Nikolić, Ranđelović, Ranđelović, 2013).

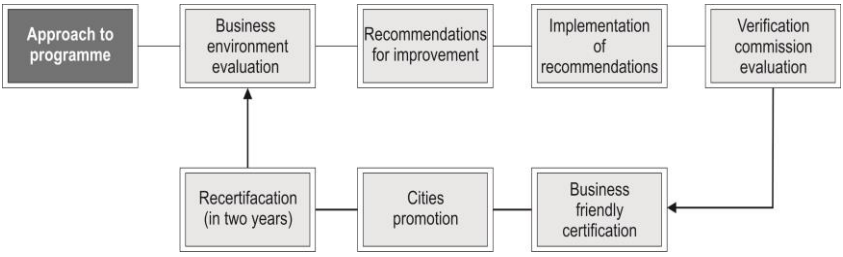

Figure 1. BFC process scheme, source Naled-Serbia

Table 1. The criteria weights according to the methodology of the local governments

	C_1	C_2	C_3	C_4	C_5	C_6	C_7	C_8	C_9	C_{10}	C_{11}	C_{12}
Importance according to NALED	1.25	0.90	0.67	1.19	0.66	0.71	1.00	0.75	1.08	1.21	1.50	0.83
Additive Normalized Relative Weights ω_i^*	*0.11*	*0.08*	*0.06*	0.10	0.06	0.06	0.09	0.06	0.09	0.10	0.13	0.07

Source: Authors' review according to NALED

Table2. Relevant criteria

		C1	*C2*	*C3*	*C4*	*C5*	*C6*	*C7*	*C8*	*C9*	*C10*	*C11*	*C12*	*Average per Municipality*
	Criterion Type	*max*	*max*	*max*	*max*	*max*	*max*	*max*	*max*	*max*	*max*	*max*	*max*	*max*
1	Mun. 1	0.800	1.059	1.000	0.732	0.875	1.000	1.000	0.733	0.636	0.829	1.000	1.250	0.910
2	Mun. 2	1.000	0.824	0.750	1.000	0.925	1.000	1.000	0.933	1.000	0.878	1.000	1.000	0.943
3	Mun. 3	0.625	0.947	0.800	0.941	0.857	1.182	0.900	0.750	0.667	0.940	0.929	1.100	0.887
4	Mun. 4	0.900	0.824	0.875	1.000	0.950	1.000	1.000	0.700	0.682	0.756	1.000	0.750	0.870
5	Mun. 5	1.000	0.618	1.000	0.780	0.600	0.667	1.000	0.600	0.591	0.976	0.833	1.250	0.826
6	Mun. 6	1.000	1.059	0.750	0.939	0.900	0.944	1.000	0.867	0.909	0.793	1.000	1.250	0.951
7	Mun. 7	1.000	0.941	1.000	0.780	0.700	0.778	1.000	0.567	0.727	0.695	1.000	0.500	0.807
8	Mun. 8	1.000	0.824	1.000	0.890	1.000	1.056	1.000	0.833	0.545	0.878	1.000	1.250	0.940
9	Mun. 9	1.000	0.824	1.000	0.671	0.650	1.000	1.000	0.867	0.955	0.805	0.833	1.000	0.884
10	Mun.10	1.000	0.941	0.750	0.808	0.625	0.944	1.000	0.667	0.909	0.793	1.000	1.000	0.870
11	Mun.11	1.000	0.765	0.750	0.829	0.725	1.000	1.000	0.533	0.636	0.756	0.833	1.250	0.840
12	Mun.12	0.800	1.000	0.750	0.890	0.900	1.000	1.000	0.533	0.727	0.732	0.833	0.750	0.826
13	Mun.13	0.800	1.000	1.000	0.744	0.725	1.000	1.000	0.767	0.455	0.768	1.000	1.000	0.855
14	Mun.14	1.000	0.941	1.000	0.866	0.725	1.000	1.000	0.833	0.545	0.683	1.000	0.875	0.872
15	Mun.15	1.000	0.941	1.000	1.000	0.900	1.000	1.000	1.000	1.000	0.939	1.000	0.623	0.950
16	Mun.16	1.000	0.824	1.000	0.890	0.775	1.000	1.000	0.800	0.909	0.780	1.000	1.000	0.915
17	Mun.17	1.000	0.824	1.000	0.780	0.875	0.889	1.000	0.667	0.545	0.829	0.667	0.750	0.819
18	Mun.18	1.000	0.882	1.000	1.024	0.900	0.944	1.000	0.867	1.091	0.927	1.000	1.000	0.970
19	Mun.19	0.938	1.000	1.000	0.944	0.929	1.000	1.000	0.850	0.833	0.780	1.000	1.000	0.940
20	Mun.20	1.000	0.947	0.600	0.972	0.929	1.000	1.000	0.850	0.583	0.940	1.000	1.000	0.902
21	Mun.21	1.000	0.765	0.875	0.805	0.800	1.000	1.000	0.733	0.818	0.768	1.000	1.000	0.880
Average level per criterion		0.946	0.889	0.900	0.871	0.822	0.960	0.995	0.760	0.751	0.821	0.949	0.933	0.883

Source: Authors' review according to NALED

It is exactly this evaluation of the criteria of importance in the model that will be the subject of the re-evaluation by the application of appropriate methods. As stated, the idea of the authors is to perform an aggregation of DEA and AHP to determine the weight of a particular criterion. In its first step, this procedure includes the subjectively obtained judgements from NALED experts in the aggregated DEA method, thus making one closed circle of subjectivization of DEA, as one objective method, and the objectification of AHP as one subjective method. To protect the interests of the 21 cities in the last NALED report, the results of the BFC process are presented without highlighting their names (Table 2) including the investments per population in the cities shown in Table 3 (Statistical Office of the Republic of Serbia, Municipalities and Regions in the Republic of Serbia in 2012, 2012).

Table 3. Investment per capita

	Realized investments in fixed assets in €			Population	Investment per capita
	2009	2010	Total for period 2009-2011		
1 Municipality 1	41,633,640.00	18,326,250.00	59,959,890.00	115,303	520.020
2 Municipality 2	105,575,220.00	69,980,070.00	175,555,290.00	255,699	686.570
3 Municipality 3	17,706,400.00	14,492,600.00	32,199,000.00	55,454	580.643
4 Municipality 4	15,044,760.00	12,462,680.00	27,507,440.00	59,263	464.159
5 Municipality 5	12,124,350.00	13,429,050.00	25,553,400.00	80,881	315.938
6 Municipality 6	51,600,930.00	35,555,310.00	87,156,240.00	92,487	942.362
7 Municipality 7	62,219,040.00	13,755,290.00	75,974,330.00	86,413	879.200
8 Municipality 8	20,515,800.00	7,593,520.00	28,109,320.00	67,576	415.966
9 Municipality 9	42,270,770.00	79,628,490.00	121,899,260.00	195,681	622.949
10 Municipality 10	75,072,730.00	37,136,250.00	112,208,980.00	148,801	754.088
11 Municipality 11	55,099,500.00	33,956,900.00	89,056,400.00	129,568	687.333
12 Municipality 12	5,386,570.00	7,807,540.00	13,194,110.00	65,969	200.005
13 Municipality 13	2,386,480.00	2,453,770.00	4,840,250.00	43,302	111.779
14 Municipality 14	10,160,350.00	21,980,000.00	32,140,350.00	87,288	368.210
15 Municipality 15	34,216,960.00	15,184,540.00	49,401,500.00	49,609	995.817
16 Municipality 16	14,883,070.00	17,722,980.00	32,606,050.00	156,252	208.676
17 Municipality 17	10,654,430.00	7,742,220.00	18,396,650.00	60,006	306.580
18 Municipality 18	17,777,610.00	21,084,270.00	38,861,880.00	131,368	295.825
19 Municipality 19	319,581,580.00	407,635,680.00	727,217,260.00	299,294	2,429.776
20 Municipality 20	23,588,600.00	23,872,440.00	47,461,040.00	109,809	432.214
21 Municipality 21	27,176,670.00	30,699,490.00	57,876,160.00	83,022	697.118
Total	964,675,460.00	892,499,340.00	1,857,174,800.00	2,373,045	-
Average	45,936,926.67	42,499,968.57	88,436,895.24	113,002	610.906

Source: Authors' review according to the Statistical Office of the Republic of Serbia

In the following section, the proposed procedure, based on DEA methodology, will be used to measure the efficiency of the observed municipalities in attracting foreign direct investment, as well as the measure of certain criteria of importance in achieving the goal defined as the highest possible amount of investment per capita in the municipality. The logic is simple – if the criterion of importance is higher, the relative

importance is higher as well. This logic will also be used as the basis for pairwise comparison in the AHP model.

CRITERIA IMPORTANCE DERIVATION WITH DEA METHOD

As it is mentioned, the first step in the methodology presented in the second section is a relative efficiency evaluation of all the observed DMUs (municipalities). In this case, the inverted DEA model is used in order to determine the BFC criteria importance (output weights). Naturally, the level of criteria fulfilment would have an impact on the level of investments. Contrary to this, we considered the investments as an input and the BFC criteria are considered as outputs for the purpose of the analyses. The DEA-solver software (Cooper, Seiford, Tone, 2006) is applied for efficiency evaluation. The efficiency indexes and criteria (inputs and outputs) weights for each DMU are obtained as a result of applying the DEA model with variable return to scale (VRS) assumption - presented in Table 4.

Table 4. DEA mulitiliers Z_{ji}

	Investments {I}	C1 {O}	C2 {O}	C3 {O}	C4 {O}	C5 {O}	C6 {O}	C7 {O}	C8 {O}	C9 {O}	C10 {O}	C11 {O}	C12 {O}
Municip. 1	0.0019	0.0000	0.0000	0.2857	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.5714
Municip. 2	0.0015	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.7777	0.0000	0.0000	0.0000	0.2744
Municip. 3	0.0017	0.0000	0.0000	0.0035	0.1101	0.0000	0.0000	0.0000	0.0000	0.0000	0.5485	0.0000	0.3436
Municip. 4	0.0022	0.0000	0.0000	0.0000	0.3783	0.4289	0.2142	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Municip. 5	0.0032	0.0000	0.0000	0.0223	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	1.0017	0.0000	0.0000
Municip. 6	0.0011	0.3400	0.6059	0.0000	0.0008	0.0000	0.0000	0.0000	0.0000	0.0194	0.0000	0.0000	0.0000
Municip. 7	0.0011	0.3042	0.2194	0.3096	0.0000	0.0000	0.0000	0.0694	0.0000	0.0000	0.0000	0.1103	0.0000
Municip. 8	0.0024	0.0000	0.0000	0.0476	0.0000	0.8348	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.1176
Municip. 9	0.0016	0.0496	0.0000	0.1475	0.0000	0.0000	0.3981	0.0000	0.2763	0.0227	0.0000	0.0000	0.1436
Municip. 10	0.0013	0.3621	0.0000	0.0000	0.0000	0.0000	0.0000	0.1167	0.0000	0.0000	0.0000	0.2799	0.2413
Municip. 11	0.0015	0.4370	0.0000	0.0000	0.0000	0.0000	0.2958	0.0893	0.0000	0.0000	0.0000	0.0000	0.1779
Municip. 12	0.0050	0.0000	0.0000	0.0000	0.0000	1.1111	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Municip. 13	0.0089	0.0569	0.0029	0.1122	0.0276	0.0248	0.0567	0.0601	0.0612	0.0308	0.1460	0.2662	0.2448
Municip. 14	0.0027	0.3151	0.3310	0.1071	0.0000	0.0000	0.2663	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Municip. 15	0.0010	0.0000	0.0000	0.2089	0.0000	0.0000	0.0000	0.0000	0.7911	0.0000	0.0000	0.0000	0.0000
Municip. 16	0.0048	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	1.1001	0.0000	0.0000	0.0000
Municip. 17	0.0033	0.3624	0.0000	0.4579	0.0000	0.0000	0.0000	0.1797	0.0000	0.0000	0.0000	0.0000	0.0000
Municip. 18	0.0034	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.9166	0.0000	0.0000	0.0000
Municip. 19	0.0004	0.0000	0.2892	0.1467	0.1708	0.3966	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0344
Municip. 20	0.0023	0.0686	0.1441	0.0000	0.0000	0.0000	0.5263	0.0000	0.0000	0.0000	0.2858	0.0000	0.0000
Municip. 21	0.0014	0.3931	0.0000	0.0000	0.0000	0.0000	0.1686	0.0915	0.0000	0.0000	0.0000	0.1863	0.1606
ω_i^*		0.11	0.08	0.06	0.10	0.06	0.06	0.09	0.06	0.09	0.10	0.13	0.07
$\overline{z}_i^*$		0.1727	0.0744	0.0648	0.0401	0.0980	0.0675	0.0319	0.0668	0.1098	0.1157	0.0640	0.0943

Source: The author's calculations with DEA-solver software (Cooper, Seiford, Tone, 2006)

The results given in Table 4 have been considered as the matrix Z, and have been used as the basis for composite weights calculation according to Eq. 9. Each element z_{ji} is calculated as the product of corresponding element in Table 4 and Additive Normalized Relative

Weights (ω^*_i) (Table 1). Finally, the normalized average weights are calculated according to eq. 10 and given in the last row of Table 4.

CRITERIA IMPORTANCE DERIVATION WITH THE AHP METHOD USING OBTAINED WEIGHTS WITH THE DEA

Using the average weights $\bar{z}^*_i$ obtained by the DEA method, the pairwise comparison matrix has been formed (Table 5), which has acceptable inconsistency because the consistency index is CI<0.1. The higher relative weight $\bar{z}^*_i$ results imply the higher preference in 1-9 Saaty's scale for pairwise comparison.

Table 5. Pairwise comparison matrix

	c1	c2	c3	c4	c5	c6	c7	c8	c9	c10	c11	c12
c1	1	3	3	9	9/5	3	9	3	9/5	9/7	3	9/5
c2	1/3	1	1	3	3/5	1	3	1	3/5	3/7	1	3/5
c3	1/3	1	1	3	3/5	1	3	1	3/5	3/7	1	3/5
c4	1/9	1/3	1/3	1	1/5	1/3	1	1/3	1/5	1/7	1/3	1/5
c5	5/9	5/3	5/3	5	1	5/3	5	5/3	1	5/7	5/3	1
c6	1/3	1	1	3	3/5	1	3	1	3/5	3/7	1	3/5
c7	1/9	1/3	1/3	1	1/5	1/3	1	1/3	1/5	1/7	1/3	1/5
c8	1/3	1	1	3	3/5	1	3	1	3/5	3/7	1	3/5
c9	5/9	5/3	5/3	5	1	5/3	5	5/3	1	5/7	5/3	1
c10	7/9	7/3	7/3	7	7/5	7/3	7	7/3	7/5	1	7/3	7/5
c11	1/3	1	1	3	3/5	1	3	1	3/5	3/7	1	3/5
c12	5/9	5/3	5/3	5	1	5/3	5	5/3	1	5/7	5/3	1

Source: The author's calculations with SANNA 2014 AHP software (www.nb.vse.cz)

The AHP method has been used to calculate weights that include an objective component – the weight of criteria derived in the DEA procedure (Table 6). This step represents an aggregation of two methods, the DEA and the AHP.

Table 6. Weights calculation using AHP method

	c1	c2	c3	c4	c5	c6	c7	c8	c9	c10	c11	c12
Additive Normalized Weights	0,19	0,06	0,06	0,02	0,1	0,06	0,02	0,06	0,1	0,15	0,06	0,1

Source: The author's calculations with SANNA 2014 AHP software (www.nb.vse.cz)

DISCUSSION

Results discussion is based on the comparisons of weights obtained by the additive normalizing using the relative importance of the criteria determined by NALED, and the local self-governments (Table 1), and the results obtained in the procedure proposed, and presented in this paper

(Table 6), with the aim to indicate the practical implications of the applied procedures and the obtained results. In fact the proposed procedure introduces objectivity into the process of criteria importance derivation with the AHP by taking into account the weights obtained by the DEA efficiency evaluation after introducing subjectivity in the DEA with an expert opinion.

The T-test is used as a statistical tool, as it provides the simplest way to determine a possible difference of the results obtained by the proposed method compared to the one proposed by experts.

Table 7. Paired Samples Statistics

Naled Weights	Proposed Method Weights	t-Test: Paired Two Sample for Means		
0,11	0,19			
0,08	0,06			
0,06	0,06	Mean	0,084166667	0,081666667
0,1	0,02	Variance	0,000535606	0,002487879
0,06	0,1	Observations	12	12
0,06	0,06	Pearson Correlation	0,206071706	
0,09	0,02	Hypothesized Mean Difference	0	
0,06	0,06	Df	11	
0,09	0,1	t Stat	0,171575062	
0,1	0,15	P(T<=t) one-tail	0,433443621	
0,13	0,06	t Critical one-tail	1,795884819	
0,07	0,1	P(T<=t) two-tail	0,866887242	
		t Critical two-tail	2,20098516	

Source: The author's calculations using the software package EXCEL

The results of the t-test are presented in Table 7. It clearly shows that, based on paired statistics, there is no statistically significant difference between those two groups of results (p-value is 0.867) whereby the starting hypothesis of the authors is proven.

In the considered case study, the proposed procedure enables for the decision-maker preferences to bethe basis for the pairwise comparison, and they are used as efficiency measures of the criteria in the realization of the highest possible amount of investment per capita in the individual municipalities. Thus generated weights can also serve as the basis for testing the relevance of the criteria. In fact, if there are any criteria that show very low efficiency, their relevance in the model should be re-examined. Such a procedure achieves a substantial improvement in the model for the BFC process, both in terms of determining the weights, and with regard to the continuity of the testing criteria relevance.

Finally, the results of this paper can be a good starting point for further research. The authors show that the proposed procedure exists as applicable, but the paper does not consider the degree of quality with

relation to other known procedures. Namely, to make such an analysis, it would be necessary to conduct a research with more than one case study, and more than one method of integration for comparison.

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ЈЕДНА ИНТЕГРИСАНА ДЕА/АХП МЕТОДОЛОГИЈА ЗА ОДРЕЂИВАЊЕ ЗНАЧАЈА КРИТЕРИЈУМА У ПРОЦЕСУ ПОСЛОВНО-ПРИЈАТЕЉСКЕ ЦЕРТИФИКАЦИЈЕ НА ЛОКАЛНОМ НИВОУ

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Резиме

У процесу пословно-пријатељске цертификације, на локалном нивоу нужне, како би локалне самоуправе могле да планирају и управљају политиком обезбеђивања конкурентних услова за стимулацију улагања и унапређење свог пословног амбијента, кључни проблем јесте утврдити важност критеријума, за шта су на располагању различити вишекритеријумски методи одлучивања. Већина коришћених класификација те методе дели на две групе: субјективне и објективне. У овом раду представљен је један метод њихове интеграције коришћењем метода аналитичке хијерархије (АХП), као метода субјективне анализе, и метода анализе података (ДЕА), као објективног приступа са идејом увођења објективности у процес прорачуна важности критеријума са АХП методом, узимајући у обзир тежине добијене помоћу процене ефикасности ДЕА методом, а после увођења субјективитета у ДЕА експертско мишљење.

У разматраном случају, предложени поступак омогућава да се за доносиоце одлука као основа за упоредно упоређивање користе мерила ефикасности критеријума у остваривању највише могућег износа улагања по глави становника у дотичној општини. Тако генерисане тежине могу такође послужити као основа за тестирање релевантности критеријума. У ствари, ако постоје критеријуми који показују веома ниску ефикасност, њихову релевантност у моделу треба поново испитати. Овакав поступак постиже значајно побољшање у моделу БФЦ процеса – како у погледу одређивања тежине тако и у погледу континуитета критеријума испитивања.

Једноставним речима, предложени интегрисани поступак, у почетку, извршава субјективизацију објективне ДЕА методе користећи субјективну процену стручњака за коефицијенте тежине у моделу. Даље, процес је обрнут, тј. извршена је објективизација субјективног АХП приступа кроз примену тежина које су у претходном кораку одређене користећи ДЕА методологију.

INSTRUCTIONS FOR AUTHORS ON PAPER PREPARATION

Formatting. Papers should be sent as *Microsoft Office Word* files (version 2000, 2003, 2007), font *Times New Roman*, font size 12. Page setup margins should be 2.5 cm (top, bottom) and 2.5 cm (left, right), paper size A4 (210 mm x 297 mm).Paragraphs should be formatted with line spacing 1.5, and justified (Format, Paragraph, Indents and Spacing, Alignment, Justified). Do not break words at the end of the line.

Paper length. Research papers should not exceed 37.000 characters (spaces included), and reviews should not be longer than 8.000 characters (spaces included).

Language, alphabet. The languages of publication in the TEME is English (font *Times New Roman*). Contributions be rejected if the language is not at the appropriate level of correctness and style. If the authors wish to increase the visibility of their papers, they are supposed to submit Serbian version of the article as well (as Supplementary file - Word format, using the Cyrillic alphabet).

PAPER

The author should remove from the text of the paper all the details that could identify him/her as the author. Authors must enter all the necessary data during the electronic submission of the paper.

PAPER STRUCTURE

- **Paper title in English**
- **Abstract in English** 100 to 250 words, followed by 5 key words.
- The title and the abstract of the paper should be directly linked to the paper content, with no information that would identify the author(s) of the paper.
- **Paper title in Serbian**
- **Abstract in Serbian**, followed by 5 key words.
- The paper should follow the **IMRAD** structure (Introduction, Methods, Results and Discussion), when it presents an empirical study
- **Paper body** should not contain more than three levels of sub-division into *sections* and *sub-sections*. Level one sections should be introduced by headings printed in *Italic* and in *CAPITAL LETTERS*, formatted as centred. Level two sections should be introduced by headings in *Italic*, with the initial capital letter, formatted as centred. Level-one and level-two headings should be separated from the previous text by one line. Level three sections should be introduced by a heading printed in *Italic*, but placed as a regular paragraph, separated by a full-stop from the text that follows.

Each paragraph should have the first line indented (1 cm).

In-text citations: Whenever referring to a source (monograph, article, statistical source), the author should cite the source in the text, using the

author-date system (Surname, year of publication, pages referred to, all in brackets) – Please, refer to the table at the end of these *Instructions*.

▪ When referring to several works by the same author, provide all the years of publication chronologically after the author's name. If there are several works by the same author published the same year, provide further specification using letters (a, b,...) after the year of publication: "...confirming this hypothesis (Wuthnow, 1987a, p. 32)...".

▪ When referring to several works by different authors, provide the authors' names in brackets following the alphabetical order, separating authors by semi-colon: "... several studies were central to this question (Jakšić, 1993; Iannaccone, 1994; Stark and Finke, 2000)."

Direct quotations can be included in the text if not longer than 20 words. Longer quotations should be given as separate paragraphs, spaced-out from the previous and following text, and with the following formatting: Format, Paragraph, Indents and Spacing, Left 1 cm, Right 1 cm, Line spacing – Single; for instance:

To explain how "culture through language affects the way we think and communicate with others of different background" (Gumperz, 2001, p. 35), Gumperz states:

> "Conversational inference is partly a matter of a priori extra-textual knowledge, stereotypes and attitudes, but it is also to a large extent constructed through talk" (Gumperz, 2001, p.37)."

It is crucial that the in-text citations and references should match the literature listed at the end of the paper. All in-text citations and references must be listed in the References, and the References must not contain sources not referred to or cited in the text. The bibliography listed at the end of the paper should contain author names and source titles in original languages and alphabets, without translation.

Tables, graphs, and figures. Tables, graphs and figures should be numbered (sequentially), with captions explaining their content. Captions should precede tables, but follow graphs and figures. Graphs and figures must be clearly visible in the text, so they should be provided in 300dpi resolution. Graphs and figures must be single objects (no Drawing elements added). Where necessary, mathematical formulas should be added to the text using Microsoft Equation Editor.

Appendices. should be marked by *letters* (sequentially), e.g. Appendix A, Appendix B etc., and should contain a title describing the content of the appendix. When there is only one appendix, no letters are necessary in its title (only "Appendix").

➢ **Literature (References).** A complete list of references should be provided as a separate section at the end of the paper. The references should be listed in accordance with the **APA Style**. The references should be listed alphabetically, by the authors' last (family) names. For publication titles in Serbian, the English translation should also be

provided in brackets. The works by the same author should be listed chronologically (from the most to the least recent ones). Wherever possible, provide the DOI number, too, in addition to other reference data.

- **Summary in Serbian.** Please provide a summary at the end of the paper, after the References section. The summary should not be longer than 1/10 of the paper (i.e. 2,000 to 3,700 characters). The summary should be formatted as Italic, with single line spacing.

EXAMPLES OF SOURCE QUOTING AND REFERENCING:

Journal papers and articles – 1 author

In-text citation:

(Manouselis, 2008), i.e. (Manouselis, 2008, p. 55)

In 'References':

Manouselis, N. (2008). Deploying and evaluating multiattribute product recommendation in e-markets. *International Journal of Management & Decision Making, 9*, 43-61. doi:10.1504/IJMDM.2008.016041

Journal papers and articles – 2 to 6 authors

In-text citation:

First reference: (Uxó, Paúl, & Febrero, 2011)

Subsequent references: (Uxó et al., 2011)

In 'References':

Uxó, J., Paúl, J., & Febrero, E. (2011). Current account imbalances in the monetary union and the great recession: Causes and policies. *Panoeconomicus*, 58(5), 571-592.

Journal papers and articles – more than 6 authors

In-text citation:

(Cummings et al., 2010, p. 833)

In 'References':

Cummings, E., Schermerhorn, A., Merrilees, C., Goeke-Morey, M., Shirlow, P., & Cairns, E. (2010). Political violence and child adjustment in Northern Ireland: Testing pathways in a social–ecological model including single-and two-parent families. *Developmental Psychology*, *46*, 827-841. doi: 10.1037/a0019668

Book – 1 author

In-text citation:

(Heschl, 2001, p. 33)

In 'References':

Heschl, A. (2001). *The intelligent genome: On the origin of the human mind by mutation and selection*. New York, NY: Springer-Verlag.

Book – edited volume

In-text citation:

(Lenzenweger & Hooley, 2002)

In 'References':

Lenzenweger, M. F., & Hooley, J. M. (Eds.). (2002). *Principles of experimental psychopathology: Essays in honor of Brendan A. Maher*. Washington, DC: American Psychological Association.

Paper or chapter in an edited volume

In-text citation:

(Cvitković, 2007)

In 'References':

Cvitkovic, I. (2007). Katolicizam [Catholicism]. U A. Mimica i M. Bogdanović (Prir.), *Sociološki rečnik* [*Dictionary of Sociology*] (str. 226-227). Beograd: Zavod za udžbenike.

Encyclopaedia entry

In-text citation:

(Lindgren, 2001)

In 'References':

Lindgren, H. C. (2001). Stereotyping. In *The Corsini encyclopedia of psychology and behavioral science* (Vol. 4, pp. 1617-1618). New York, NY: Wiley.

Papers in Conference Proceedings

In-text citation:

(Bubanj, 2010)

In 'References':

Bubanj, S., Milenković, S., Stanković, R., Bubanj, R., Atanasković, A., Živanović, P. et al. (2010). Correlation of explosive strength and frontal postural status. In: Stanković, R. (Ed.): *XIV International Scientific Congress FIS Comunications 2010 in Sport, Physical Education and Recreation* (191-196). Niš: University of Niš, Faculty of Sport and Physical Education.

PhD Dissertations, MA Theses

In-text citation:

(Gibson, 2007)

In 'References':

Gibson, L. S. (2007). *Considering critical thinking and History 12: One teacher's story* (Master's thesis). Retrieved from https://circle.ubc.ca/

Institutions as authors

In-text citation:

(Републички завод за статистику, 2011)

In 'References':

Републички завод за статистику. *Месечни статистички билтен*. Бр. 11 (2011).

Laws

In-text citation:

(Закон о основама система васпитања и образовања, 2004, чл. 5, ст. 2, тач. 3.)

In 'References':

Закон о основама система васпитања и образовања, Службени гласник РС. Бр. 62 (2004)

Legal and other documents

In-text citation:

(Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276, 1971)

In 'References':

Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276, (1970), ICJ Reports (1971) 12, at 14

Please refer to:

Publication Manual of the American Psychological Association, 6th Edition, 2009;

http://www.library.cornell.edu/resrch/citmanage/apa

NOTES

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- TEME will publish only one paper by the same author in one year (except for book reviews and commentaries).
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- Positive or negative reviews are not sent to the authors, whether their paper has been rejected or accepted for publication.

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Author's statement. Together with the submission, the authors should send a signed Author's statement form (signed and scanned, in the pdf format, as Supplementary file).

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