FACTA UNIVERSITATIS
Series: **Law and Politics** Vol. 11, N°1, 2013, pp. 23 - 38

Original Scientific Paper

SENTENCING LEGAL ENTITIES AS PEPRETRATORS OF CRIMINAL OFFENCES: Analysis of the Normative Framework of the Republic of Serbia

UDC 343.22:347.191]:343.241

Dušica Miladinović-Stefanović

Faculty of Law, University of Niš, Serbia

Abstract. *The criminal liability of legal entities became an integral part of the Serbian criminal law system by adopting the 2008 Act on the Liability of Legal Entities for Criminal Offences. Under the formerly existing legislation, the criminal liability of legal entities had been based on the subjective liability of natural persons. However, this Act has not been put into effect yet, probably due to the extensive scope and depth of the envisaged reform. In that context, this paper is an attempt to elaborate on one segment of this Act – the legal framework for sentencing legal entities. In particular, the author focuses on all the stages involved in this process, the system of sanctions and the range of sentences, the purpose of sanctioning, the mitigating and aggravating circumstances, as well as the degree of the criminal liability of legal entities, the size of legal entities, the position and number of responsible persons in the legal entity who have committed a criminal offence, the measures that the legal entity has undertaken to prevent and uncover a criminal offence, and the measures undertaken against the responsible person after the commission of the criminal offence. Each of these factors has been examined with an aim to assist competent courts in interpreting and applying this Act, to identify possible drawbacks in the regulation of this issue and to propose adequate solutions to overcome these flaws.*

Key words: *criminal liability of legal entities, mitigating and aggravating circumstances, sentencing.*

I

The criminal liability of legal entities became an integral part of the Serbian criminal law system by the adoption of the 2008 Act on the Liability of Legal Entities for Criminal

Received May 11, 2013/ Accepted June 15, 2013
Corresponding author: Dušica Miladinović-Stefanović, LL.M. Teaching Assistant
Faculty of Law, Trg Kralja Aleksandra 11, 18000 Niš, Serbia
Tel. +381 18 500 244 • E-mail: dusica@prafak.ni.ac.rs

Offences.[1] From the historical perspective, the subject matter of this Act was not a novelty in the Serbian legislation because it had already been part of the former Serbian legal order in some brief periods of the Serbian legal history; however, it was now regulated in a detailed and systematic manner for the first time (Perić, 1986, p. 32, Zlatarić, 1959, p. 120).[2] Thus, Serbia joined a wide circle of countries whose national legislations accepted the concept of a perpetrator of a criminal offence, which includes both natural and legal persons (Cetinić, 2005, p. 300).[3] By adopting this Act, Serbia also responded to the obligations assumed under the international law because there is a number of international documents (signed and ratified by the Republic of Serbia) which call for the regulation of criminal liability of legal persons. The list of international sources is rather long and the following documents are particularly significant: the Criminal Law Convention on Corruption,[4] the International Convention for the Suppression of Financing Terrorism,[5]

[1] The Act on the Liability of Legal Entities for Criminal Offences*, Official Gazette of the Republic of Serbia, no. 97/2008*. The Act regulates the conditions governing the liability of legal entities for criminal offences, penal sanctions they may be awarded and the procedural rules governing the process of awarding and execution of criminal sanctions. The legal provisions of this Act may be applied to both national and foreign legal subjects having the status of a legal entity under the positive law. Explicitly, the Republic of Serbia, the autonomous province, the local self-government units and their bodies of authority are exempted from liability (Article 3 para. 1). Other legal entities vested with performing public powers by virtue of law may not be held liable for criminal offences committed while exercising such public powers (Article 3 para. 2). A general clause specifies the offences that legal entities may be held liable for, including all the incriminations referred to in the special part of the Criminal Code and other legislative acts, if the conditions governing the liability of legal entities are satisfied (Article 2).

[2] A number of legislative acts passed after World War II also contained the liability of legal entities: the Act on Criminal Offences against Peoples and the State (*Official Gazette of the Democratic Federative Yugoslavia (DFY)), no. 66/45, Official Gazette of the Federative Peoples Republic of Yugoslavia (FPRY), no. 59/46, 106/47 and 110/47*); the Act on Suppression of the Illegal Trade, Prohibited Speculation and Economic Sabotage (*Official Gazette of the FPRY, no. 56/46*), and the 1947 Criminal Code – General Part (*Official Gazette of the FPRY, no. 106/47*) which provides that a legal entity may exceptionally be a perpetrator of a criminal offence only in case such liability is explicitly envisaged under the Act (Article 19), which actually stipulated only two sanctions: full and partial confiscation of property (Article 36). This legal solution had been applied until the adoption of the 1957 Criminal Code. Apart from the obvious political abuse of legal institutes (which had been construed for the purpose of misappropriating the assets of capitalist companies), there were other attempts to regulate this issue, such as the draft Criminal Code in 1951, which was eventually given up (O. Perić, 1986). Further development was marked by the 1960 Corporate Offences Act (*Official Gazette FPRY*, *no. 16/60*), which introduced corporate offences as a specific type of delicts committed by legal entities, as well as by the 1977 Corporate Offences Act which laid down the foundations of the currently existing legislation on this issue. Consequently, the domestic legal theory focused on the issue of liability for corporate offences even though there were authors (such as B. Zlatarić, 1959) who had been in favour of introducing the criminal liability of legal entities even earlier. Thus, a legal entity could be held liable for an infraction, a corporate offence and a criminal offence. This is an unusual solution, particularly given the fact that other countries (primarily the former Yugoslav republics) revoked some of the corporate offences or classified them into criminal offences. Hence, it was only a matter of time when corporate offences would be placed on the Serbian national agenda again in terms of assessing the justifiability of their retention.

[3] It is already a tradition in the Anglo-Saxon legal system. As for the countries of the European-Continental legal system, the process was started by the Netherlands which was the first country to introduce the criminal liability of legal entities in the mid-20th century, initially aimed at regulating economic delicts and subsequently (20 years later) for others offences. Nowadays, criminal liability of legal entities is recognized by a majority of countries.

[4] Act on the Ratification of the Criminal Law Convention on Corruption, *Official Gazette of the Federal Republic of Yugoslavia (FRY) – International Treaties*, *no. 2/2002,* and *Official Gazette of Serbia and Montenegro*, *no. 18/2005*.

the UN Convention against Transnational Organised Crime and its Additional Protocols,[6] the Convention on Cybercrime,[7] the UN Convention against Corruption,[8] the Council of Europe Convention on Action against Trafficking in Human Beings,[9] the Council of Europe Convention on the Prevention of Terrorism,[10] the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism,[11] etc. Having signed the Stabilisation and Association Agreement, Serbia has committed itself to the implementation of *acquis communautaire*, including the Second Protocol of the Convention on the Protection of the European Communities' Financial Interests[12] which pertains to money laundering and liability of legal entities but does not explicitly insist on criminal liability; in contrast, the Recommendation R(88)18 concerning liability of enterprises having legal personality for offences committed in the exercise of their activities[13] contributed to spreading this kind of liability among the Member States.

II

The basic guidelines in the process of sentencing legal entities are the statutory limitations on sanctions envisaged for a specific criminal offence, the purpose of punishment, as well as all the circumstances governing the scope of punishment, such as: the degree of liability of a legal entity, the size of a legal entity, the position and the number of responsible persons in the legal entity who have committed a criminal offence, the measures taken by the legal entity to prevent and detect a criminal offence, and the measures the legal entity took against the responsible person after the commission of a criminal offence (Article 15). As the purpose of punishment has not been defined in the Act on the Criminal Liability of Legal Entities, the legislator apparently believes that the features pertaining to this category of criminal offenders are not so distinctive as to result in prescribing any specific goals. On the contrary, given the heterogeneity of persons who may find themselves in a position of a perpetrator of a criminal offence (including not only natural and legal persons but also juvenile and adult persons), the Recommendation of the

---

[5] Act on the Ratification of the International Convention for the Suppression of Terrorism, *Official Gazette of the FRY – International Treaties*, *no. 7/2002*.

[6] Act on the Ratification of the UN Convention against Transnational Organised Crime and its Additional Protocols, *Official Gazette of the FRY – International Treaties*, *no. 6/2001*.

[7] Act on the Ratification of the Convention on Cybercrime, *Official Gazette of the Republic of Serbia (RS)*, *no. 19/2009*.

[8] Act on the Ratification of the UN Convention against Corruption, *Official Gazette of S&M*, *no. 12/2005*.

[9] Act on the Ratification of the Council of Europe Convention on Action against Trafficking in Human Beings, *Official Gazette of the RS*, *no.* 19/2009.

[10] Act on the Ratification of the Council of Europe Convention on the Prevention of Terrorism, *Official Gazette of the RS*, *no. 19/2009*.

[11] Act on the Ratification of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, *Official Gazette of the RS*, *no. 19/2009*.

[12] *The Convention on the Protection of the European Communities' Financial Interests (OJ C 316),* 27 November 1995.

[13] *Recommendation R (88)18 concerning liability of enterprises having legal personality for offences committed in the exercise of their activities.*

Committee of Ministers concerning consistency in sentencing[14] suggests that it is necessary to stipulate specific goals by relying on the general objectives and adapting them to the particular needs of each category of criminal offenders. As this is not the case in Serbia, the process of sentencing legal entities is governed by the objective referred to in Article 34 of the Act on Criminal Liability of Legal Entities), which is based on the respective application of the legal provision contained in Article 42 of the Criminal Code. Even if there was no such referral, it would be logical to take it as a guideline because it simply arises from the coherence of the criminal law system. It means that the competent court determines a relevant sentence in order to prevent the legal entity from committing criminal offences in the future, to deter others from the commission of criminal offences and, simultaneously, to express social denunciation of the criminal offence, enhance moral strength and reinforce the obligation to abide by the law. It goes without saying that the described effect cannot be accomplished directly given the fact that a legal entity does not have mental capacity which could make it subject to direct criminal liability; instead, the desired effect is accomplished only indirectly by exerting impact on the natural persons constituting the legal entity. There is an opinion expressed in legal theory that there are some other differences pertaining to the mode of achieving the purpose of punishment, depending on whether the addressee is a natural or a legal person. Thus, it has been emphasized that the effect of general prevention is much more lenient and insubstantial in cases involving legal persons than in cases involving natural persons, and that it is somewhat indistinctive; special prevention is feasible although it is considered to be less conspicuous in punishments than in safety measures; the concept of retribution is undisputable while the concept of deserved punishment is the most debatable issue because the punishment may also affect those who did not participate in the commission of a criminal offence in any way, or were against its commission (Stojanović, Shine, 2007, p. 83). Other authors believe that punishment should exclusively have a preventive function and, to some extent, reparative and restitution function (Ilić, 2010, p. 203, Cartier, 2005, p. 293). Reparation and restitution are the focal point in some legal systems; in the US law, for example, the Federal Sentencing Guidelines Manual sets out the principle of providing compensation for sustained damage as the general principle in cases involving legal entities.[15] In that respect, the court should require that the legal entity take all appropriate steps to provide compensation to victims, remedy the harm caused and recover the unlawfully acquired proceeds (§8 B1.1. of the Guidelines). The conclusion on the significance of reparation is also supported by the rule which is applied if the financial resources of the legal entity are so limited that it is not be able to pay the fine and make

[14] *Recommendation R (92)17 of the Committee of Ministers to Member States Concerning Consistency in Sentencing*.

[15] The Sentencing Guidelines Manual is a voluminous act which includes quite a unique system of numeric guidelines. For the purposes of this paper, it will suffice to say that all relevant legal circumstances are itemised and each item is ascribed a numeric value. All items are added up towards calculating the following two scores: the gravity of the committed criminal offence and the offender's criminal record, which are cross-referenced in a sentencing table in order to determine the sentence range. The Manual has been used on the mandatory basis in sentencing criminal offences falling under the federal legislation since November 1987. Chapter 8 includes guidelines for sentencing legal entities and the aforementioned principle is provided in the introductory commentary. The text of the Guidelines is available on the website of the US Government Commission dealing with the issues related to sentencing (US Sentencing Commission: *www. ussc.gov*).

restitution; in such a case, restitution is given priority (§8C3.3. of the Guidelines). These sentencing aspects are not "covered" in the general provisions on the purpose of sentencing either in the Serbian Criminal Code or in the Act on the Criminal Liability of Legal Entities, as neither of these legal acts contains the principle on the primacy of restitution; however, it does not mean that the protection of victims' rights is neglected. Namely, the Act contains a rule on the Order of Priority in Payment which determines as follows: if the assets of a convicted legal person are reduced to such an extent that the injured party's compensation claim may not be effected due to the payment of the fine, the claim shall be settled from the fine that has been paid, but shall not exceed the maximum amount of the fine (Article 61, p. 2).

III

On the other hand, the sentencing range is not a universal guideline for sentencing legal entities. The Serbian system contains only two types of punishment: a fine and the dissolution of a legal entity (Article 13).[16] Only the first one is subject to statutory limitations on the minimum and the maximum amount of fine within the stipulated range; the rule on observing the stipulated range is completely irrelevant for the second type of punishment because of the terminal nature of this sentence.[17] Generally speaking, the fines

[16] The Croatian legislation includes the same penalties (Article 8 para. 2 of the Act on the Liability of Legal Entities for Criminal Offences, *Official Gazette no. 151/03*), which are also part of the Montenegrin legislation (Article 13 of the Act on the Liability of Legal Entities for Criminal Offences, *Official Gazette* no. *02/07)*. In addition to paying a fine and the dissolution of a legal entity, the penal system of Bosnia and Herzegovina, and the Republic of Srpska are slightly more extensive as they also provide for the confiscation of property (Article 131 of the Criminal Code of the FBH, *Official Gazette FBH no. 36/03, 37/03, 21/04, 69/04, 18/05 and 42/10;* Article 131 *of the CCFBH, Official Gazette FBH no. 3/03, 37/03, 54/04, 61/04, 30/05, 56/06, 55/06, 32/07 and 8/10*; Article 134 of the Criminal Code of the Republic of Srpska, *Official Gazette of the Republic of Srpska*, *no. 49/200 and 18/04*). In Slovenia, the legislator has envisaged the penalty of paying a fine, the prohibition of conducting business activities and the dissolution of a legal entity (Article 12-15 of the Act on the Liability of Legal Persons for Criminal Offences, *Official Gazette of the Republic of Slovenia* no. *98/04*); Macedonia has opted for a fine, a temporary prohibition of conducting a business activity, a permanent prohibition of conducting a business activity and the dissolution of legal entity (Article 96 of the Criminal Code, *Official Gazette of the Republic of Macedonia no. 19/04).* The French system is rather extensive, including even nine penalties: a fine (Article 131-37 of the Criminal Code (CC)); dissolution of a legal person; permanent or temporary prohibition of performing a specific professional activity; placement under judicial supervision; permanent or temporary prohibition of managing a legal entity which is imposed on the management of the legal entity; disqualification from public tenders; permanent or temporary prohibition of applying for public funds; prohibition of drawing cheques; confiscation of items used in, intended for or stemming from the commission of a criminal offence; and public display or dissemination of a notice of the judicial decision (Article 131-39 of the CC). The text of the French Criminal Code is available on the website: *www.legislationonline.org*.

[17] The Serbian legislator adopted the dissolution of legal entity as an independent punishment. It is only applicable if the business operation of the legal entity has been entirely or substantially in the function of the commission of criminal offences (Article 18). After the judgement (by which the sentence was imposed) has become final, the competent authority initiates the procedure for the liquidation, bankruptcy or some other mode of dissolution; the legal entity definitely ceases to exist at the moment of being deleted from the registry of legal entities. In comparative law, there are legislations that do not recognize this type of punishment; in some legislations, in case "the operation the legal entity has been driven by illegal goals or if the legal entity has

stipulated in this Act may range from a hundred thousand dinars to five hundred million dinars (RSD); however, in line with the rationale previously applied in the Serbian Criminal Code, the fines are subdivided into a number of categories depending on the the amount of the imposed fine for the commissions of a specific criminal offence, Thus, there are six different categories of fines which may be imposed for various criminal offences: 1) from one hundred thousand dinars to one million dinars for criminal offences punishable by a fine or by a term of imprisonment not exceeding one year; 2) from one million to two million dinars for criminal offences punishable by a term of imprisonment not exceeding three years; 3) from two to five million dinars for criminal offences punishable by a term of imprisonment not exceeding five years; 4) from five to ten million dinars for criminal offences punishable by a term of imprisonment not exceeding eight years; 5) from ten to twenty million dinars for criminal offences punishable by a term of imprisonment not exceeding ten years; and 6) minimum twenty million dinars for criminal offences punishable by a term of imprisonment exceeding ten years (Article 14). Considering the fact that the special part of the Criminal Code does not include any penalties for legal entities, this specific legal technique has been used to specify the minimum and the maximum amounts of fine, which depend on the gravity of criminal offences. It shall also be noted that the range of penalty is not equal in all the categories as it ranges from nine hundred thousand dinars to ten million dinars, or even to four hundred eighty million dinars for offences punishable by a term of imprisonment exceeding ten years, which ultimately leaves the competent court plenty of space for adjudication on this issue.

Generally, the so-called prohibition of dual assessment belongs to the class of generally accepted sentencing guidelines. However, it is not contained in the Act on the Liability of Legal Entities, nor is it referred to in the provisions on its application in the Criminal Code. As dual assessment has been used in the Serbian judicial practice without any legal support, there is no reason why it should not kept being applied in the process of sentencing legal entities, particularly now that it has finally been entered into the Serbia Criminal Code. In that context, the provisions *de lege ferenda* on the application of the General Part of the Criminal Code should be amended by referring to Article 54 paragraph 3 of the Code. Thus, the court would be given a clear signal that the circumstance which represents a statutory element of a criminal offence cannot be taken either as an aggravating circumstance or as a mitigating circumstance, unless it exceeds the degree required for establishing the occurrence of a criminal offence or a particular form of a criminal offence, or if there are two or more such circumstances, only one of which is sufficient to establish the occurrence of a serious or less serious form of a criminal offence (Lazarević et al, 2007, p. 47).

IV

Starting from the idea that court should be left a wide space for fine-tuning the punishment to the committed crime, in this Act the legislator applied the same pattern in standardising mitigating and aggravating circumstances which was employed in drafting

used illegal means", the amount of fine may be multiplied so that the fined subject is economically devastated; similar effects are achieved through the amount of the imposed fine (see: Sentencing guidelines, §8C1.1.).

the Serbian Criminal Code. Namely, the Act includes an open-ended list of factors which were not assessed in advance, the first of which is the degree of liability of legal entities. The Serbian legislator has opted for the model implying a derived, subjective and cumulative liability of legal entities (Cetinić, 2005, p. 307-311, Djurdjević, 2003, p. 735).[18] The conclusion on the form of liability unambiguously emanates from the legal provision that the legal entity is held accountable for criminal offences which have been committed by a responsible person acting within the remit of his/her professional activities and powers thereof and for the benefit of the legal person; the legal entity shall also be held liable when the lack of supervision or control by the responsible person has enabled the commission of crime for the benefit of that legal entity by a natural person operating under the supervision and control of the responsible person (Article 6). The subjective and cumulative nature of liability is a consequence of the postulate that liability of legal entities shall be based upon culpability of the responsible person (Article 7, para. 1). In other words, the liability of a legal entity presumes that the culpability of the responsible person for the commission of a criminal offence has been established earlier, after which the culpability of the responsible person is entered upon the legal entity; thus, there is a cumulative liability of both the responsible person and the legal entity. Conversely, if the court establishes that there is some ground for the exclusion of culpability of the responsible person or the ground for the exclusion of unlawful behaviour, the legal entity will not be held liable. It may be said that this is a lucid solution as it does not require constituting a specific liability of legal entities, given the fact that it is built on the existing (and well-known) category of culpability, which is very practical and causes the least "turbulences" in the Serbian doctrine and particularly in the judicial practice, which only recently started recognizing the concept of criminal liability of legal entities. This means that the degree of culpability of legal entities is shaped by the manner in which the responsible person has exhibited all the three elements of culpability: mental competence, intention and negligence, as well as an awareness of the illicit nature of the act (Lazarević, 2006, p. 190, Stojanović, 2007, p. 204, Jovašević, 2010, p. 232, etc). The court will certainly consider some other facts of purely subjective nature, such as motives or objectives that the responsible person has acted upon.

However, the Act also stipulates that the legal entity shall be held accountable for criminal offences committed by the responsible person even if the criminal proceedings against the responsible person have been discontinued or the act of indictment refused (Article 7, para. 2). More precisely, the discontinuation of the proceedings due to the ex-

[18] This is also the most common concept although there are some other models in criminal law doctrine and in jurisdictions of individual countries, such as: autonomous, objective and alternative liabilities. The model of objective liability developed in the Anglo-Saxon law is the oldest one (the so-called strict liability). It is applied in case of the so-called regulatory offences (committed in violation of trading and public interests) whereas other offences call for proving culpability. The German doctrine has developed the concept of autonomous liability, which implies that a legal entity is accountable for its conduct on the basis of several assumptions: first, that legal norms are directly aimed at legal entities which are obliged to observe the prescribed rules; and second, if a legal entity is capable of violating the legal norms, it must be capable of receiving an adequate rebuke; thus, the culpability of a legal entity lies in the fact that it has failed to meet the requirements laid down by the legal order. According to the theoretical model of subsidiary liability, it is not necessary to punish the legal entity if the liability of a natural person can be established. However, the international documents rule out this possibility; thus, in compliance with international standards, countries opt for cumulative liability.

piry of the period of statutory limitation, the offender's amnesty or pardon, or some other circumstances permanently barring the offender's prosecution (Article 274, para.1, item 3 of the Criminal Procedure Code (CPC)), including death of the responsible person during the proceedings (Article 217 of the CPC) or dismissing charges against the cooperating witness (Article 504 para. 2 of the CPC), do not preclude the process of instituting the proceedings against the legal entity. Yet, the question arises whether the so-called autonomous liability has thus been entered into the Code "through the back door". There are opinions that this is an assumed liability of the responsible person which will be entered upon the legal entity (Djurdjević, 2003, p. 753). This is highly disputable and it will certainly create problems in practice. On the one hand, the legislator's endeavour to prevent the legal entity from avoiding liability is understandable, which can be justified by strong arguments of criminal and political nature, as well as by the need to observe international standards (the Recommendation of the Council of Europe concerning liability of enterprises for criminal offences highlights the need to also punish legal entities even in case the responsible person remains unknown to the court); on the other hand, this possibility is inconsistent with the principle of culpability. It is unclear how the court will establish such liability without identifying and taking into account the element of mental capacity provided by the responsible person.

The size of a legal entity is also one of relevant circumstances. The basic question is how to assess the size, i.e. which parameters to apply. In some legal systems, the size depends on the number of employees. Based upon this criterion, for example, the US Sentencing Guidelines Manual envisages a five-point legal entities scale.[19] Instead of using the concept of size, there are legislations which apply the criterion of the economic power of legal entity instead, leaving it to the court to evaluate the legal entity's business results (revenues, expenditures, loss and profit) as well as the value of its assets.[20] This opens a dilemma whether the size, besides the volume of workforce engaged by the legal entity, may be in correlation with the profit gained. The Serbian legislation has set no such guidelines, nor has it defined the meaning of the concept of the size of legal entity; the legislator has only found it necessary to provide an authentic interpretation of the terms of a legal entity and a responsible person (Article 5). The domestic legal theory has not contributed to the clarification either; so far, there have been very few studies dealing with the issue of sentencing legal entities while the few published ones tend to approach the issue in an extremely simplistic, factographic manner, only by listing the mitigating and aggravating circumstances and without any additional remarks or observations. Thus, everything is left to judicial practice which is yet to develop more precise criteria.

Finally, there are several issues to be considered by the courts. First, the larger the legal entity, the greater the expectations about its organisation which shall include meticulously delimited scope of responsibilities, sophisticated internal control mechanisms, more professional management, etc. Thus, by committing a crime, large legal entities

[19] Thus, in this numeric guidelines system, five points are assigned if the organisation (or its part where the offence has been committed) has more than five thousand employees; four points are assigned if it has more than one thousand employees; three points are assigned if it has over two hundred employees; two points are assigned if it has over fifty employees; and one point is assigned if it has over ten employees (Article §8C2.5.).

[20] See: Article 16, para. 1 of the Montenegrin Act on the Liability of Legal Entities; Article 135, para. 1 of the CC of the FBH; Article 135, para. 1 of the CC of the FBH; and Article 138, para. 1. of the CC of the RS.

substantially violate the so-called public and private trust, which must be subject to appropriate punishment (Stojanović, Shine, 2007, p. 96). The second issue refers to the more substantial financial resources the legal entity is assumed to possess. If an individual's economic power is taken into account when imposing a fine on a natural person, it is quite illogical to disregard it in imposing a penalty on legal entities. As our system contains a fine payable on a daily basis system for the purpose of ensuring that the imposed fine equally affects natural persons of different financial standing, courts must apply the same principle to legal entities. Unless accordingly adjusted, a fine will not meet the deterrence objective; furthermore, in case of being perceived as a minor expenditure, a fine may have a counter-effect on the legal entity by boosting its perseverance and "escalation" of illegal behaviour. The award of insignificant amounts, from the viewpoint of a specific legal entity, would lead to developing a standpoint that a criminal offence "pays off", and there is no way this can result in positive changes in future performance, nor can it serve as a positive example to others.

The position and number of responsible persons within the legal entity who have committed a criminal offence are reasonable criteria for sentencing legal entities. It means that the court is obliged to examine their structure, organisation and management. The offenders' senior position in the hierarchical structure of the legal entity and the involvement of a number of persons are indisputable aggravating circumstances which multiply the detrimental effect of the offence and call for no further explication. The participation of a number of persons is virtually inevitable when criminal offences are committed by legal entities. Some authors observe that it is justifiable to assume that a "simple" shop assistant will not spontaneously and of his/her own accord offer a bribe to a public servant who has come for inspection; however, he/she will do it following an order given by his superior, such as the sales manager, who in turn needs the "assistance" of the accountant to cover up the amount by issuing fictitious invoices (Stojanović, Shine, 2007, p. 94).

In the sentencing process (within the legally prescribed framework for a specific criminal offence), the court also takes into account the measures undertaken by the legal entity to prevent and uncover a criminal offence. In that context, the court obviously examines whether the internal regulations of a legal entity envisage relevant mechanisms for the prevention, monitoring, control and detection of illicit conduct. If there are necessary and reasonable measures envisaged for these purposes, the sentence may be reduced; ultimately, it may serve as an incentive to other legal entities to develop and perfect similar mechanisms. However, this is only the starting point of examination as the proper operation of the envisaged mechanisms is much more significant than the fact that they are merely written down "on paper". Despite perfect regulations, the unlawful conduct may be tolerated within the legal entity, and the senior employees in charge of monitoring such behaviour may implicitly or explicitly allow, fail to report or even take part in such behaviour in one way or another. Even though the envisaged measures may generally improve the standing of the legal entity in criminal proceedings, the ineffectiveness of these measures is an aggravating circumstance while the exhibited degree of tolerance of a criminal offence has a direct impact on the punishment. On the other hand, the acts of detecting and reporting a criminal offence are mitigating circumstances. Their significance is supported by the fact that these activities may be used as an optional basis for the exoneration from punishment, provided that these activities had taken place before the legal entity learnt about the instigation of the criminal proceedings (Article 19). Certainly,

the acts of detecting and reporting a criminal offence may be regarded as mitigating circumstances only if the court determines that the purpose of punishment would not be achieved by exoneration. The act of reporting has the greatest impact on the punishment when it is performed immediately after finding out about the offence and before the offence is detected by the competent authorities; in such a case, it is evidence of good organization and self-control, as well as the greatest contribution to detecting and shedding light on the criminal matter at issue. In legal theory, there is a remark that a legal entity may postpone the act of reporting an offender for a reasonable period of time, without sustaining any adverse effects in terms of its own legal position, in case it is necessary for the purpose of conducting its own investigation (Stojanović, Shine, 2007, p. 100).

The measures undertaken by the legal entity towards the responsible person after the commission of the criminal offence include a disciplinary proceeding and rendering disciplinary measures. In that context, mitigating circumstances exist if the legal entity has carried out a disciplinary proceeding, replaced the persons who had failed to duly perform the monitoring process, and issued a notice on the termination of employment to the responsible person who had committed the criminal offence. The actions contrary to the aforesaid conduct shall be regarded as aggravating circumstances.

V

It is indisputable that the legal register of relevant circumstances could be more extensive; the legislator could have used Article 54 of the Criminal Code as a role model and amend it by introducing the specific rules pertaining to legal entities. First of all, it is evident that the gravity of a criminal offence is not included in the legal criteria even though it is one of the basic elements in the sentencing process within the legally prescribed framework for a specific criminal offence.[21] The gravity is usually determined by the amount of the illegally obtained benefit or the size of the damage caused. However, given the nature of criminal offences committed by legal entities, it may also include immaterial damage such as: detrimental consequences to the environment, human life or health, national security, etc. Obviously, the offences that imply immaterial loss or harm are more serious and deserve a higher punishment than the offences resulting in some material damage (Stojanović, Shine, 2007, p. 93). Some papers dealing with corporate crime contain numerous cases, some of which may be used to illustrate the possible catastrophic proportions of criminal offences of legal entities. For example, a mistake made by a worker on packaging in the Sandoz corporation in Basel resulted in an environmental disaster caused by spilling over 30 tons of toxic chemicals in the Rhine river; the spillage caused death of the river flora and fauna in a 300km-long course of the river and jeopardised the water supply in the towns situated along the river banks (Djurdjević, 2003, p. 721). Much more dramatic is the case of the American Union Carbide Corporation, where 40 tons of methyl isocyanate gas leaked from their company plants located in the suburbs of the Indian town of Bhopal causing instant death of four thousand people

[21] Gravity of a criminal offence is the first item on the list of mitigating and aggravating circumstances in the Montenegrin legal act (Article 16, paragraph 1); similarly, the US Sentencing Guidelines differentiate thirty-three degrees of gravity of a criminal offence (§S2.3.).

while sixteen thousand people subsequently died from the consequences of poisoning in the years to come (Ignjatović, 2008, p. 152). Evidently, the gravity of the offence must have been lying within the scope of legal circumstances. Yet, the concept of gravity is included in the legal provisions on the envisaged fine, whose sub-framework depends on the punishment stipulated in the Criminal Code which ultimately reflects (or should reflect) the gravity of the criminal offence. On the other hand, the court decision on the dissolution of legal entity is not related to the gravity of a criminal offence because the only requirement is that the business activity of the legal entity was (entirely or to a significant extent) aimed at the commission of criminal offences. Eventually, the gravity of a criminal offence will surely be taken into account by the court which is obliged within its general authority to consider all the circumstances that may lead to awarding a higher or a smaller punishment; thus, the judicial practice will not be impaired. However, this is not an issue here; the fact is that the list of circumstances could have been more logical.

Second, the legal provisions do not explicitly refer to the previous conviction, which is highly specific in nature as it includes two segments: a previous conviction of the responsible person and a previous conviction of the legal entity. A previous conviction of the legal entity is to be interpreted in a regular manner (Lazarević, 2006, p. 194, Stojanović, 2007, p. 206, Jovašević, 2010, p. 233, etc.). However, it should be emphasised that the existence of criminal history of the responsible person has some new dimensions, particularly concerning the persons in senior executive positions. Such persons should possess certain qualities which are incompatible with the previous conviction. As they are entrusted with making the key decisions, running the business policy of the legal entity, monitoring and controlling the performance of others (etc.), an impeccable personal background is one of the guarantees that they will perform these activities legally and properly. For this reason, the legal entity that placed a previously convicted person into the position of the responsible person should be sent a deliberate message by awarding a higher amount of fine. Concerning the parameters for the assessment of the previous conviction of the legal entity, the court should take into account the correspondence and correlation between the new and the previous offence, as well as the time interval between the two offences, which may help the court come up with a possible pattern in criminal behaviour. Given the specific features of the Serbian system which includes not only criminal liability but also liability for misdemeanours and corporate offences, the previous conviction is to be understood in a broader sense; it implies that the court has to establish whether there have been previous convictions for other public law delicts and not for criminal offences only. Moreover, it should be noted that various transformations which the legal entity goes through can complicate the overall situation and create confusion in the process of assessing whether there has been any previous conviction. If the transformation implies a merger of legal entities, where each partner preserves some autonomy and separate management within the framework of the newly established entity created by merger, it is logical that each legal entity will keep its own business histories referring to the times when they were completely independent subjects (Stojanović, Shine, 2007, p. 98). The situation is the same in case where a legal entity goes through the process of re-organization and becomes a new legal entity. The relevance of these statements may be supported by the provision on the dissolution or the change of status of legal entities (Article 8), which states as follows: when the legal entity ceases to exist before the completion of the instigated criminal proceedings, a fine (as well as a safety

measure and confiscation of the proceeds from the crime) may be imposed on the legal successor of the dissolved legal entity, if the liability of the dissolved legal entity had been established; moreover, if the legal entity ceases to exist after the completion of the criminal proceedings where the competent court has established the criminal liability of the legal entity and rendered a relevant sanction for the criminal offence, the imposed sanction shall be executed against the legal successor. There is no reason why the same logic shall not apply to the data on previous convictions. The only exception from this rule shall be the act of purchasing a legal entity without taking over its business activity; in that case, it would be unjustifiable to burden the new owner with the criminal history of the legal entity whose property has been purchased (Stojanović, Shine, 2007, p. 98).

Third, it seems that the envisaged legal circumstances should provide a better coverage for the behaviour of a legal entity after the commission of a criminal offence. This has partially been accomplished by introducing the disciplinary measures undertaken against the responsible person within the organisational framework of the legal entity; the internal character of these measures shows the determination of the legal entity to isolate and eliminate the "infected tissue". The Act does not explicitly stipulate other "external" elements, such as the legal entity's attitude towards the victims of a criminal offence and the activities related to criminal proceedings. These elements may always be introduced into the sentencing process through the discretionary authority of the court to shape the punishment on the basis of all relevant circumstances; the legal entity's conduct towards the victims can be modelled upon the principle of logic stating that "*he who can do more can do less"* as well as through an discretionary authority to exonerate the legal entity from the punishment if it voluntarily and without delay eliminated the incurred detrimental consequences and returned the proceeds unlawfully gained from the committed crime (Article 19, para. 2). Certainly, it may be done only under the condition that the exoneration from punishment is not an adequate social response and that the purpose of punishment requires from the court to impose a penalty. In particular, the argument on introducing the provision on the legal entity's conduct towards victims seems to be crucial given the fact that the victims of such offences are the "weaker" or more vulnerable party in this relationship, due to the overt imbalance of power. Considering that many multinational companies are more powerful and better off than individual states, it is not difficult to conclude that an individual or a group involved in a dispute with such a company may be in a totally helpless and inferior position. In that context, it seems justifiable to provide for an additional assurance of the victims' rights and interests. The criteria for assessing the legal entity's attitude towards an injured party (a victim of crime) should be the same as in cases where the offender is a natural person; thus, the court shall establish: whether the legal entity has compensated the full amount of damage, or has done it only partially (and why); whether the compensation has been paid before or after the competent authorities discovered the offence; whether the legal entity has eliminated all other detrimental consequences of the committed criminal act, etc. The same criteria are also applied in returning the proceeds unlawfully gained from the committed crime. However, as some criminal offences may be without victims (the so-called victimless crimes), the elimination of detrimental consequences may also imply other kinds of activities, such as cleaning the polluted environment, a withdrawal of harmful products from the market, or some other similar action; in that case, the value of such an activity would depend on whether it has been undertaken voluntarily or upon a court order, and whether it has been

undertaken before or after the legal entity has learnt about the instigation of criminal proceedings. For all these reasons, the general wording "the offender's behaviour after the commission of the criminal offence and particularly his/her attitude towards the victim" seems to be more appropriate; it also successfully encompasses the other track of "external" conduct, where the court examines whether the legal entity has cooperated with the competent authorities in the detection, prosecution and adjudication of the criminal offence, or obstructed the course of proceedings. Some foreign laws contain specific provisions on the obstruction of justice,[22] which largely acts as an aggravating circumstance; thus, any undue influence on the court, prosecutors, witnesses, co-defendants, expert witnesses and other participant in the criminal proceedings by means of force, threat or intimidation, giving or offering bribe, and other illegal means must be sanctioned by imposing a higher amount of fine. The legal theory notes that some forms of conduct may seem to have a negative impact but they actually cannot be regarded as obstructions of justice and attributed to the legal entity as an aggravating circumstance. This is the case when a natural person within the organizational structure of the legal entity attempts to conceal the offence from the legal entity (Stojanović, Shine, 2007, p. 98). The logic dictates that the natural person must be acting on behalf of the legal entity while obstructing the course of justice; if it is not the case, it is unjustifiable to include it in the penalty against a legal entity. On the other hand, the punishment is reduced if the legal entity cooperates with the competent authorities from the moment it has been officially notified on instituting of the criminal proceedings and provides all relevant information that it may have at its disposal.

In addition to the aforementioned circumstances, it may be assumed that there will be some other (usually aggravating) circumstances in practice, such as those considering the duration of the criminal activity, the participation of a larger number of subjects and their criminal association. This conclusion is based on the observation that these are typical characteristics underlying the phenomenology of crimes committed by legal entities (Konstantinović et al, 2009, p. 177). Other countries, which have more experience with this type of liability, have observed a widespread occurrence of criminal association; thus, some legal entities (coming from the same or different countries), which are generally involved in legal business activities, may occasionally spot a "good" business opportunity and jointly get involved in planning, organizing and performing specific criminal activities (quite conveniently termed "organized crime"). Thus, the EU jurisprudence has recorded a number of cases involving customs evasions and subvention frauds which have proven to be detrimental to the financial interest of the European Union (Djurdjević, 2003, pp. 722-723). Also, it is not unjustified to expect that another aggravating circumstance may be related to the fact that the offence has been committed despite the orders and warnings issued by the state authorities and specific regulatory bodies.

[22] See: the Montenegrin Act on the Criminal Liability of Legal Entities (Article 16, para. 1, point 13); in the US Sentencing Guidelines, obstruction of justice is set as one of the indicators of the degree of culpability (§8C2.5.).

VI

The Serbian Act on the Liability of Legal Entities for Criminal Offences definitely brings significant novelties into the Serbian criminal law, which is traditionally based on individual/subjective liability of a natural person as a perpetrator of a criminal act. The radical approach to reform activities is probably one of the reasons why this Act has not been put into practice since its entry into force. Hence, the author's interpretation of some substantive criminal law concepts and the proposals aimed at improving some of the existing legal solutions should be regarded as an attempt to support this Act and to facilitate its application in the judicial practice.

REFERENCES

1. Cartier, Marie Elisabeth (2005). Kaznenopravna odgovornost pravnih osoba u francuskom pravu (Corporate Criminal Liability in French Law), Hrvatski ljetopis za krivično pravo i praksu, vol. 12, br. 2, 2005, str. 279-293.
2. Cetinić, Marinka (2005). Zakon o odgovornosti pravnih lica za krivična dela – još jedan korak Srbije ka Evropskoj uniji (Act on the Liability of Legal Entities for Criminal Offences – Another step for Serbia towards the European Union), Arhiv za pravne i društvene nauke, br. 3-4, 2005, str. 299-314.
3. Djurdjević, Zlata (2003). Kaznena odgovornost i kazneni postupak prema pravnim osobama u Republici Hrvatskoj (Criminal Liability and Penal Procedure against Legal Entities in the Republic of Croatia), Hrvatski ljetopis za krivično pravo i praksu, vol. 10, br. 2, 2003, str. 719-779.
4. Ignjatović, Djordje (2008). Kriminologija (*Criminology*), Beograd, 2008.
5. Ilić, Goran (2010). Marginalije uz Zakon o odgovornosti pravnih lica za krivična dela (Notes on the Law on Corporate Criminal Liability for Criminal Offence), Zbornik: Stanje kriminaliteta u Srbiji i pravna sredstva reagovanja, IV deo (urednik Đ. Ignjatović); Beograd, 2010. godine, str. 196-206.
6. Jovašević, Dragan (2010). Krivično pravo, Opšti deo (*Criminal Law, General Part)*, Beograd, 2010.
7. Konstantinović-Vilić, Slobodanka, Nikolić-Ristanović, Vesna, Kostić, Miomira (2009). Kriminologija (*Criminology*), Niš, 2009.
8. Lazarević, Ljubiša (2006). Komentar Krivičnog zakonika Republike Srbije (Commentary on the Criminal Code of the Republic of Serbia), Beograd, 2006.
9. Lazarević, Ljubiša; Vučković, Branko; Vučković, Vesna (2007). Komentar Zakona o odgovornosti pravnih lica za krivična djela (Commentary on the Act on the Liability of Legal Entities for Criminal Offences), Cetinje, 2007.
10. Perić, Obrad (1986). Funkcija privrednih prestupa u našem pravnom sistemu i elementi za razgraničenje od ostalih kategorija kaznenih delikata (The Function of Corporate Offences in the Serbian Legal System and Elements for the Demarcation of other Categories of Punishable Delicts), Pravo, teorija i praksa, br. 10-11, 1986, str. 21-32.
11. Stojanović, Zoran (2007). Komentar Krivičnog zakonika, drugo izmenjeno i dopunjeno izdanje, (Commentary on the Criminal Code, 2nd ed.), Beograd, 2007.
12. Stojanović, Zoran; Shine, Richard (2007). Komentar Zakona o odgovornosti pravnih lica za krivična djela *(Commentary on the Act on the Liability of Legal Entities for Criminal Offences),* Podgorica, 2007.
13. Zlatarić, Bogdan (1959). Krivična odgovornost pravnih osoba po jugoslovenskom pravu, (Criminal Liability of Legal Entities in Yugoslav Law), Zbornik Pravnog fakulteta u Zagrebu, br. 1-2, 1959, str. 120-132.

Legal Documents

14. Convention on the Protection of the European Communities` Financial Interests (OJ C 316), dated 27 November 1995.
15. Recommendation R (88)18 concerning liability of enterprises having legal personality for offences committed in the exercise of their activities.
16. Recommendation R (92)17 of the Committee of Ministers to Member States Concerning Consistency in Sentencing

17. US Sentencing Guidelines Manual, United States Sentencing Commission; www. ussc.gov.
18. Zakon o odgovornosti pravnih lica za krivična dela, Službeni glasnik RS, (Act on the Liability of Legal Entities for Criminal Offences, Official Gazette of the Republic of Serbia),br. 97/08.
19. Zakon o odgovornosti pravnih lica za krivična djela, Narodne novine, (Act on the Liability of Legal Entities for Criminal Offences, Official Gazette of the Republic of Croatia), br. 151/03.
20. Zakon o odgovornosti pravnih lica za kažnjiva dela, Uradni list RS, (Act on the Liability of Legal Entities for Criminal Offences, Official Gazette of the Republic of Slovenia), br. 98/04.
21. Zakon o odgovornosti pravnih lica za krivična djela, Službeni list CG, (Act on the Liability of Legal Entities for Criminal Offences, Official Gazette of the Republic of Montenegro), br. 02/07.
22. Zakon o privrednim prestupima iz 1960. godine, Službeni list FNRJ, (Corporate Offences Act of 1960, Official Gazette FPRY), br. 16/60.
23. Zakon o privrednim prestupima iz 1977. godine, Službeni list SFRJ, (Corporate Offences Act of 1977, Official Gazette FPRY), br. 4/77, 36/77, 14/85, 74/87, 57/89 i 3/90.
24. Zakon o suzbijanju nedopuštene trgovine, nedopuštene špekulacije i privredne sabotaže, Službeni list FNRJ, (Act on the Suppression of Illicit Trade, Speculation and Economic Sabotage, Official Gazette of the FPRY), br. 56/46.
25. Zakon o krivičnim delima protiv naroda i države, Službeni list DFJ, br. 66/45, Službeni list FNRJ, br. 59/46, 106/47 i 110/47. (Act on Criminal Offences against Peoples and the State, Official Gazette of the Democratic Federative Yugoslavia (DFY), no. 66/45, Official Gazette of the Federative Peoples Republic of Yugoslavia (FPRY), no. 59/46, 106/47 and 110/47.
26. Krivični zakonik – Opšti deo, *Službeni list FNRJ,* (Criminal Code – General Part, *Official Gazette of the FPRY),* br. 106/47.
27. Krivični zakonik Federacije BiH, Službene novine FBiH, (Criminal Code of the FBH, Official Gazette FBH), br. 36/03, 37/03, 21/04, 69/04, 18/05, 42/10.
28. Krivični zakonik BiH, Službeni glasnik BiH, (Criminal Code of the FBH, Official Gazett*e* FBH), br. 3/03, 37/03, 54/04, 61/04, 30/05, 56/06, 55/06, 32/07 i 8/10.
29. Krivični zakonik Republike Srpske, Službeni glasnik Republike Srpske, (Criminal Code of the Republic of Srpska, Official Gazette of the Republic of Srpska), br. 49/2000, i 18/04.
30. Кривични законик Републике Македоније, Службен весник на Република Македонија, (Criminal Code of the Republic of Macedonia, Official Gazette of the Republic of Macedonia), бр. *19/04.*
31. Zakon o potvrđivanju Konvencije UN protiv transnacionalnog organizovanog kriminala sa dopunskim protokolima, Službeni list SRJ – Međunarodni ugovori, br. 6/01. (Act on the Ratification of the UN Convention against Transnational Organised Crime with Additional Protocols, Official Gazette of the FRY – International Treaties, no. 6/01).
32. Zakon o potvrđivanju Krivične konvencije o korupciji, Službeni list SRJ – Međunarodni ugovori, br. 2/02 i Službeni list SCG, br. 18/05.(Act on the Ratification of the Criminal Law Convention on Corruption, Official Gazette of the Federal Republic of Yugoslavia (FRY) – International Treaties, no. 2/02 and Official Gazette of Serbia and Montenegro, no. 18/05).
33. Zakon o potvrđivanju Međunarodne konvencije o suzbijanju finansiranja terorizma, Službeni list SRJ – Međunarodni ugovori, br. 7/02. (Act on the Ratification of the International Convention for the Suppression of Financing Terrorism, Official Gazette of the FRY – International Treaties, no. 7/02).
34. Zakon o ratifikaciji Konvencije UN protiv korupcije, Službeni list SCG, br. 12/05. (Act on the Ratification of the UN Convention against Corruption, Official Gazette of S&M, no. 12/05).
35. Zakon o potvrđivanju Konvencije Saveta Evrope o borbi protiv trgovine ljudima, Službeni glasnik Republike Srbije, br. 19/09. (Act on the Ratification of the Council of Europe Convention on Action against Trafficking in Human Beings, Official Gazette of the RS, no. 19/09).
36. Zakon o potvrđivanju Konvencije Saveta Evrope o sprečavanju terorizma, Službeni glasnik Republike Srbije, br. 19/09. (Act on the Ratification of the Council of Europe Convention on the Prevention of Terrorism, Official Gazette of the RS, no. 19/09).
37. Zakon o potvrđivanju Konvencije Saveta Evrope o pranju, traženju, zapleni i oduzimanju prihoda stečenih kriminalom i finansiranja terorizma, Službeni glasnik Republike Srbije, br. 19/09. (Act on the Ratification of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, Official Gazette of the RS, no. 19/09).
38. Zakon o potvrđivanju Konvencije o visokotehnološkom kriminalu, Službeni glasnik Republike Srbije, br. 19/09. (Act on the Ratification of the Convention on High-technology Crime, Official Gazette of the Republic of Serbia (RS), no. 19/09).

ODMERAVANJE KAZNE PRAVNIM LICIMA KAO UČINIOCIMA KRIVIČNIH DELA – analiza normativnog okvira u Republici Srbiji[23]

Dušica Miladinović-Stefanović

Donošenjem posebnog zakona 2008. godine krivična odgovornost pravnih lica je postala integralni deo našeg krivičnopravnog sistema, koji se do tada zasnivao na individualnoj subjektivnoj odgovornosti fizičkih lica. Dubina izvršenog reformskog zahvata je verovatno uticala na to da se ovaj Zakon još uvek ne primenjuje. U tom smislu rad predstavlja pokušaj da se detaljno objasni jedan njegov segment – pravni okvir za odmeravanje kazne pravnim licima. Tako je pažnja posvećena svim smernicama ovog procesa, sistemu kazni i kaznenim rasponima, ciljevima kažnjavanja, olakšavajućim i otežavajućim okolnostima, a posebno stepenu odgovornosti pravnog lica, veličini pravnog lica, položaju i broju odgovornih lica u pravnom licu koja su učinila krivično delo, merama koje je pravno lice preduzelo u cilju sprečavanja i otkrivanja krivičnog dela, i merama koje je nakon učinjenog dela preduzelo prema odgovornom licu. Svaki od ovih faktora je ispitivan sa ciljem da se pomogne sudovima u tumačenju i primeni, kao i da se otkriju eventualni propusti u regulisanju i predlože adekvatna rešenja za njihovo prevazilaženje.

Ključne reči: *krivična odgovornost pravnih lica, olakšavajuće i otežavajuće okolnosti, odmeravanje kazne.*

[23] This article is a result of scientific research in the project "Human and Minority Rights in the European Legal Space" (N^{o} 1404D), supported by the Ministry of Education, Science and Technological Development of the Republic of Serbia.