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THE HISTORY OF FINES IN SERBIA (1804–1860)

SUMMARY

The author is trying to show the development of fines in Serbia since 1804, when the First Serbian uprising started and the public authority was established, to 1860, when the Criminal Code of the Principality of Serbia was enacted. The roots of fine go back to the similar institute in Serbian medieval criminal law and the Ottoman law.

The study pays special attention to the beginning of the nineteenth century, when the Serbian public authorities took over the prosecution and punishment from the Ottoman authorities. The author is trying to answer several questions: what happened with fines, when did they appear, to which extent did they affected the convicted?

Key words: fines, Serbia (1804–1860), Police Code (1850), Criminal Code (1860).

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MONEY LAUNDERING IN SERBIAN CRIMINAL LAW

SUMMARY

The topic of this work is considering a criminal offence of money laundering in our criminal legislation. The special focus is directed at the legal concept of the criminal offence of money laundering and the consistency of given solutions in the determined concept framework. Certain amount of attention is also paid to the previous form of this criminal offence in our legislation, having in mind that this topic is rarely to be found in professional literature in Serbia. Next, the criminal offence of money laundering is presented in detail as currently prescribed in the article 231 of Serbian Criminal Code,

with taking into consideration various apprehensions and interpretations of its respective segments. Special attention is paid to the issue of concurrence of criminal offences of money laundering and the predicate offence, and it also deals with the issue of sentencing perpetrator out of negligence. Some proposals *de lege ferenda* enhancing the incrimination and more efficient practice are given here.

Key words: money laundering, predicate criminal offence, concurrence of offences, perpetrator out of negligence.

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THEORETICAL AND PRACTICAL ASPECTS
OF NARCOTICS ABUSE IN CRIMINAL LAW REGULATIONS

SUMMARY

In this research paper the author discusses about crimes from group of criminal offences against human health which have legally controlled psychoactive substances as an object of perpetrator's act. In the first place, these offences are Unlawful Production and Circulation of Narcotics (Article 246) and Unlawful Possession of Narcotics (Article 246a) and (for this work needs, partly) Facilitating the Taking of Narcotics (Article 247).

In the first part of the work, there are basic theoretical questions of General part of a Criminal law which are related to these offences. It is discussed about decriminalization in the context of modern view of drugs' problem solving. We think that legalization of drugs has no perspective in future changes of Criminal Code of Serbia. „Drug possession“ is an offence which should be kept in our Criminal law system, despite its dogmatic and criminal policy shortcomings, such are dubious conditions for its applying. The first of them, „a smaller quantity“ is legal standard and depends on the circumstances of case. The second one is „own personal use“ of drugs and, it is the most criticized reason for sanctioning drug possession because it predicts that only drug addiction is the reason for incrimination. Despite some reasonable arguments, we would not completely agree with them. On the other side, there are some useful mechanisms in our current law which can meet those demands, in acts which are not socially as dangerous as, for example, manufacturing or putting into circulation. Those mechanisms are: an Act of Minor Significance (Article 18) and Remittance of Punishment (Article 58). Further, we have one disputable article which excluded some of criminal offences from Mitigation of Penalty and Unlawful Production and Circulation of Narcotics is one of them (Article 57, paragraph 2 and 3). It is controversial because it derogates general institutes of Criminal law, for example Attempt or Substantially Diminished Mental Capacity. Also, we have mentioned Seizure of Objects as one of the Security Measures in the context of the Principle of the Opportunity of Criminal Procedure, because the positive Criminal Procedure Code of the Republic Serbia has no explicit provision about it, hereof we suggest a few ideas how that problem can be solved.

In the second part of the work, in which criminal offences are analyzed through the judicial practice, the author pays special attention to the conditions which represent characteristics of criminal offences from Article 246 and Article 246a of the Criminal Code, especially to the difference between „keeping for personal use“ and „keeping for circulation“. It is quite sensitive question because it has influence on: jurisdiction, costs of the procedure, mandatory defence, sentencing range etc.

In the end, the author recapitulates basic ideas of this research paper and offers possible *de lege ferenda* solutions for the narcotic abuse in Serbian Criminal Law.

Key words: Narcotics, Possession, Decriminalization, Smaller Quantity, Mitigation of Penalty

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WHY ARE CERTAIN PROVISIONS
OF EXTRAORDINARY LEGAL REMEDIES
IN LAW ON MISDEMEANORS UNUSABLE –
EXAMPLE OF VIOLATION OF RIGHT ON DEFENSE

SUMMARY

The paper analyzes the specific provisions of extraordinary legal remedies in the Law on Misdemeanors. It is found that their application in practice would make a series of difficult obstacles to surmount. The paper is conceived through monitoring the imaginary case from the angle of person convicted by legally binding judgement in a misdemeanor proceeding. Attempt to apply extraordinary legal remedies from Law on Misdemeanors reveals their uselessness. In particular, the proportions of noncompliance between the Constitution and the Law on the Constitutional Court on the one hand, and the provisions of the Law on Misdemeanors relating to the reason for renewal of misdemeanor proceedings – „Violation of constitutionally guaranteed rights as determined by the Constitutional Court“, on the other. It is concluded that the provisions of extraordinary legal remedies in the Law on Misdemeanors, have such disadvantages that make them ineffective remedies.

In order to facilitate transparency, paper is exhibited in two separate parts. Each section refers to one extraordinary legal remedy. The parts are exhibited in theses. Theses do not have subtitles. It is pointed to the reader that the defendant in misdemeanor proceeding can be convicted without having any knowledge of an ongoing misdemeanor proceeding. Person obtains the knowledge of that only when he is delivered the judgement. Through the paper, the reader is introduced with the opportunities that such a defendant are available when contesting the judgment. In the end, the reader acquires a vague sense of insecurity. A misdemeanor „can happen“ to him.

Keywords: misdemeanor proceedings; the request for the for renewal of misdemeanor proceeding; request for protection of legality; constitutional appeal; ineffective remedy.

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POSITIVE AND COMPARATIVE ASPECTS OF INSANITY

SUMMARY

The tenth revision of the ICD-10 defines mental disorder as „a clinical determined group of symptoms of behavioral characteristics, which in most cases create suffering and avert the functioning of personality“. According to the criminal legislation of most countries, insanity is characterized by two criteria: biological (medical) and psychological (legal). Biological criterion indicates the presence of the disordered state of psyche, while psychological

criterion implies the person's absence of the ability to grasp the significance of his actions (intellectual element) or to control them (voluntary element). Differences in creating the institute of insanity in European legislations are mainly confined to the area of legal technique. First of all, it refers to the use of different categories of psychological states in describing the biological criterion of insanity. On the other hand, in Anglo-American system of criminal law, institute of insanity has certain specificity, since the biological criterion includes various forms of psychopathology. The definition of insanity in the Model Penal Code to great extent corresponds to the modern level of development of criminal law and psychiatry in the United States.

Key words: criminal law, insanity, guilt, mental disorder, accountability.

Aleksandar Matković

CRIMINAL OFFENSES CONNECTED WITH
THE OCCULT – TERM AND DEFINITION, PASSIVE
SUBJECTS AND OBJECTS OF THE ACTS
OF COMMISSION

SUMMARY

The first part of this paper consists of an analysis of term and definition of occult-related criminal offenses. After the presentation and critical review of existing definitions, author proposes several new, legal-oriented definitions. He concludes that the use of a term “occult crime” is not adequate. Instead of it, he suggests use of descriptive and flexible categories (not related to positive law), such as, for example: “offenses associated with the occult”, “crime with elements of the occult” and the like. Offense connected with the occult is defined as any offense which includes certain occult components among its objective or subjective characteristics. According to the broader definition, it is any offense that, in addition to its description based on a positive law, also has some specific characteristics which indicate the presence of a certain occult components, whereby those components can manifest themselves among the causes and motivational factors of that specific crime, within the method of execution, as well as within all other subjective and objective circumstances in the planning and execution of individual criminal act. Crime related to the occult is defined as a heterogeneous and flexible category which includes all criminal offenses that are in some way and at any level associated with occult content. The second part of this paper is dedicated to the discussion about the features of the four significant categories

of passive subjects and objects of the acts of commission: a. human being; b. animals; c. burial plot, gravestone, human remains; d. religious temples, religious monuments and other church property. In this section author analyses characteristics of all the above categories, the features of their specific subcategories, as well as typical criminal offenses related to the listed passive subjects or objects. Author points to the fact that the crime associated with the occult consists of numerous and various criminal offenses. Among other things, from this article can be concluded that, depending on the specific type of object of protection, as well as on the type of passive subjects and objects of the act of commission, there could be seen some regularities regarding the typical offenses with the elements of occult which are targeting certain passive subjects or objects. In terms of the chosen four categories, offenses that are occurring most frequently are the following. a. Human being: crimes against life and body (especially murder, aggravated murder, grievous bodily harm, light bodily injury etc); certain criminal offenses against the rights and freedoms of man and citizen; crimes against sexual freedom. b. Animals: killing and abuse of animals. c. Burial space: the crime of grave violations; some offenses against property (destruction or damage of other people's things, theft, seizure of property belonging to another); inciting national, racial and religious hatred and intolerance. d. Religious temples, monuments and other church property: different crimes against property; instigating national, racial and religious hatred and intolerance; causing general danger.

Key words: occultism, Satanism, occult crime, passive subjects, objects of the act of commission.