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ZABRANA SPALJIVANJA ŽETVENIH OSTATAKA NA POLJOPRIVREDNOM ZEMLJIŠTU**

SAŽETAK: Spaljivanje biljnih ostataka je praksa koju pojedini poljoprivrednici primenjuju na poljoprivrednom zemljištu nakon žetve. Ona izaziva brojne štetne posledice po zemljište, životnu sredinu, klimu, a može dovesti i do ugrožavanja života ljudi, životinja i imovine. U radu je analizirana pravna regulative Evropske unije i pojedinih država članica u cilju pronalaženja odgovora na pitanje na koji način je potrebno regulisati zabranu spaljivanja žetvenih ostataka. S obzirom na to da se u Republici Srbiji svake godine u periodu nakon žetve javlja veliki broj požara, posebna pažnja je posvećena analizi domaćih propisa radi pronalaženja odgovora na pitanje da li je ovaj višedecenijski problem uzrokovan neadekvatnom pravnom regulativom ili je problem u primeni važećih propisa u praksi.

Ključne reči: poljoprivredno zemljište, spaljivanje žetvenih ostataka, zaštita od požara, Zajednička poljoprivredna politika Evropske unije, unakrsna usklađenost (*cross-compliance*), zaštita životne sredine

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Rad je napisan u okviru Programa istraživanja Instituta društvenih nauka za 2021. godinu koji podržava Ministarstvo prosvete, nauke i tehnološkog razvoja.

UVOD

U Srbiji se svake godine u periodu nakon žetve javlja veliki broj požara. O njihovim razmerama i tragičnim posledicama građani uglavnom saznaju putem medija, a stanovnici seoskih sredina su svedoci prakse paljenja strništa koja se prenosi sa generacije na generaciju. Neke od vesti koje smo mogli da pročitamo tokom prethodnih godina su da je u ataru sela kod Zrenjanina usled širenja požara sa njiva 2018. godine izgorelo 880 hektara, a požar je zahvatio i Specijalni rezervat prirode Stari Begej – Carska bara.¹ Usled gustog dima koji se širio sa okolnih njiva na autoputu Beograd–Niš 2018. godine je došlo do lančanog sudara u kome je život izgubila jedna osoba.² Na osnovu satelitskih snimaka iz 2019. godine zaključeno je da je u tri sremske opštine zapaljeno preko 1.000 njiva u periodu od 10 dana.³ U 2019. godini 14 osoba je izgubilo život usled požara koji potiču od zapaljenih njiva.⁴ Ovo su samo neke od mnogobrojnih vesti u vezi sa posledicama paljenja žetvenih ostataka na poljoprivrednom zemljištu koje se ponavljaju iz godine u godinu. Podaci su veoma zabrinjavajući i ukazuju na neophodnost prestanka ovakve prakse. Jedan od pristupa u rešavanja ovog problema je zabrana spaljivanja biljnih ostataka i dosledna primena propisa u praksi. Istraživanje je posvećeno analizi propisa u ovoj oblasti u Srbiji i u pojedinim državama članicama Evropske unije u cilju pronalaženja odgovora na pitanja na koji način je potrebno regulisati zabranu spaljivanja žetvenih ostataka, da li su postojeći propisi adekvatni, da li je uzrok ovakvog stanja u pravnoj regulativi koju je potrebno izmeniti ili je problem u primeni propisa.

¹ Ministarstvo zaštite životne sredine <https://www.ekologija.gov.rs/lat/projekti/ne-pali-strnjiku>

² Lančani sudar zbog dima, jedna osoba poginula <https://www.politika.rs/sr/clanak/413578/Zbog-gustog-dima-lancani-sudar-na-autoputu-V.-Požar-kod-Leskovca-lančani-sudar-zbog-gustog-dima> https://rtv.rs/sr_lat/hronika/pozar-kod-leskovca-lancani-sudar-zbog-gustog-dima_955544.html

³ https://rtv.rs/sr_lat/vojvodina/srem/paljenje-njiva-od-sledece-godine-pratice-satelit_1064380.html

⁴ Ministarstvo zaštite životne sredine <https://www.ekologija.gov.rs/lat/saopstenja/vesti/ne-pali-strnjiku>

NEGATIVNE POSLEDICE SPALJIVANJA BILJNIH OSTATAKA NA POLJOPRIVREDNOM ZEMLJIŠTU

Pre analize pravnih propisa potrebno je sagledati kakve su sve posledice spaljivanja biljnih ostataka na poljoprivrednom zemljištu i zbog čega je neophodno zabraniti takve aktivnosti. Pored opasnosti po život i zdravlje ljudi i imovinu, o kojima je bilo reči u prethodno navedenim primerima, spaljivanje žetvenih ostataka negativno utiče na stanje poljoprivrednog zemljišta. Paljenjem biljnih ostataka remeti se kruženje materije u agroekosistemu, dolazi do degradacije zemljišta, uništavaju se hranljive materije, smanjuje se plodnost zemljišta, uništavaju se korisni insekti i životinje.⁵ Poljoprivredno zemljište usled spaljivanja postaje podložnije eroziji, ima manju sposobnost da zadržava vlagu, a zbog gubitka organske materije potrebno je primenjivati veće količine đubriva.⁶ Stručnjaci ukazuju da je neophodno da poljoprivrednici primenjuju upravo suprotnu praksu, odnosno da zaoravaju žetvene ostatke jer se na taj način, pored izbegavanja prethodno navedenih štetnih posledica, postižu brojni pozitivni efekti. Zaoravanjem biljnih ostataka povećava se količina organske materije u zemljištu, povećava se aktivnost mikroflora zemljišta, poboljšava se plodnost zemljišta što utiče na povećanje prinosa i kvaliteta poljoprivrednih proizvoda, smanjuje se podložnost eroziji, i dr.⁷

⁵ Jaćimović, G., Aćin, V., Crnobarac, J., Latković, D., Manojlović, M. (2017). Efekti zaoravanja žetvenih ostataka na prinos pšenice u dugotrajnom poljskom ogledu. *Letopis naučnih radova*, 41 (1), 1–2; Kastori, R., Maksimović, I., Putnik Delić, M. (2012). Environmental Aspects of Burning Field Residues for Use as an Alternative Fuel. *Ratarstvo i povrtarstvo*, 49 (3), 314; Sekulić, P., Ninkov, J., Hristov, N., Vasin, J., Šeremešić, S., Zereški-Škorić, T. (2010). Sadržaj organske materije u zemljištima AP Vojvodine i mogućnost korišćenja žetvenih ostataka kao obnovljivog izvora energije. *Ratarstvo i povrtarstvo*, 47 (2), 592–593.

⁶ Pearson, P., Bodin, S., Gittelsohn, A., Kinney, S., McCarty, J., Stevenson, G., Albertengo, J. (2015). *Fire in the Fields: Moving Beyond the Damage of Open Agricultural Burning on Communities, Soil, and the Cryosphere A CCAC Project Summary Report: Impacts and Reduction of Open Burning in the Andes, Himalayas – and Globally*, International Cryosphere Climate Initiative, 1. Dostupno na: <https://ccacoalition.org/en/resources/fire-fields-moving-beyond-damage-open-agricultural-burning-communities-soil-and-cryosphere>; Kastori, R., Maksimović, I., Putnik Delić, M. (2012). Environmental Aspects of Burning Field Residues for Use as an Alternative Fuel. *Ratarstvo i povrtarstvo*, 49 (3), 315. V.: United Nations, Economic Commission for Europe Executive Body for the Convention on Long-range Transboundary Air Pollution, Draft guidance document on reduction of emissions from agricultural residue burning, Geneva, 6–8 December 2021, 7. Dostupno na: https://unece.org/sites/default/files/2021-10/ECE_EB.AIR_2021_5-2113499E.pdf

⁷ Kastori, R., Maksimović, I., Putnik Delić, M. (2012). *Op. cit.*, 317; Jaćimović, G., Aćin, V., Crnobarac, J., Latković, D., Manojlović, M. (2017). *Op. cit.*, 2.

Spaljivanje biljnih ostataka izaziva i druge nepovoljne posledice. Usled paljenja dolazi do emisije štetnih gasovi koji negativno utiču na životnu sredinu i doprinose klimatskim promenama. Procene su da je u 2015. godini 3,3 % ukupnih emisija PM2.5 čestica na nivou Evropske unije uzrokovano spaljivanjem žetvenih ostataka, a da je najveće zagađenje poticalo iz mediteranskih i istočnoevropskih zemalja.⁸ Zabrane spaljivanja žetvenih ostataka možemo posmatrati i u kontekstu aktuelnih tendencija u vezi sa regulisanjem pitanja smanjenja nastanaka klimatskih promena i prilagođavanja na izmenjene klimatske uslove. Pariskim sporazumom iz 2015. godine postavljen je cilj da se porast prosečne temperature na globalnom nivou održi ispod 2 °C u poređenju sa predindustrijskim periodom.⁹ Radi postizanja ovog cilja, između ostalog, je potrebno smanjiti emisije gasova sa efektom staklene bašte. Poljoprivredna proizvodnja ima značajnu ulogu u tome imajući u vidu da na globalnom nivou 20 % emisija potiče iz poljoprivrede,¹⁰ čemu doprinosi i spaljivanje biljnih ostataka. Na nivou Evropske unije Evropskim zelenim dogovorom (*European Green Deal*) je dostizanje klimatske neutralnosti do 2050. godine postavljeno kao cilj radi čijeg ostvarenja je, između ostalog, potrebno postići nultu neto emisiju gasova staklene bašte.¹¹

Imajući u vidu sve prethodno navedene negativne posledice paljenja biljnih ostataka na poljoprivrednom zemljištu i postavljene ciljeve, možemo zaključiti da su uvođenje zabrane spaljivanja žetvenih ostataka, precizno regulisanje i primena propisa u praksi od izuzetne važnosti.

⁸ Amann, M., Gomez-Sanabria, A., Klimont, Z., Maas, R., Winiwarter, W. (2017). *Measures to address air pollution from agricultural sources*. International Institute for Applied Systems Analysis, 18. Dostupno na: https://ec.europa.eu/environment/air/pdf/clean_air_outlook_agriculture_report.pdf

⁹ United Nations, Paris Agreement, 2015, Art. 2.

¹⁰ Ekardt, F., Wieding, J., Garske, B., Stubenrauch, J. (2018). Agriculture-related Climate Policies – Law and Governance Issues on the European and Global Level. *Carbon & Climate Law Review*, 4, 319.

¹¹ European Parliament resolution of 15 January 2020 on the European Green Deal (2019/2956(RSP)), OJ C 270, 7. 7. 2021. Ovi ciljevi su postavljeni i Evropskim zakonom o klimi. V.: Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), OJ L 243, 9. 7. 2021, Art. 2.

ZABRANA SPALJIVANJA ŽETVENIH OSTATAKA NA NIVOU EVROPSKE UNIJE I U POJEDINIM DRŽAVAMA ČLANICAMA

Na nivou Evropske unije je zabrana spaljivanja žetvenih ostataka regulisana u okviru Zajedničke poljoprivredne politike, koja se zasniva na sistemu dva stuba. Prvi stub obuhvata tržišne mere i direktna plaćanja, a drugi politiku ruralnog razvoja.¹² Uredba br. 1306/2013 o finansiranju, upravljanju i nadzoru zajedničke poljoprivredne politike,¹³ kojom je regulisana zabrana spaljivanja organskih ostataka na poljoprivrednom zemljištu, čini deo pravne regulative koja pripada drugom stubu Zajedničke poljoprivredne politike. U skladu s odredbama ove uredbe države članice u okviru sistema unakrsne usklađenosti (*cross-compliance*),¹⁴ kojim su postavljeni standardi koje poljoprivrednici, korisnici direktnih plaćanja moraju da ispune, između ostalog treba da osiguraju dobro poljoprivredno i ekološko stanje poljoprivrednih površina. Državama je prepušteno da na nacionalnom i regionalnom nivou odrede minimalne standarde koje poljoprivrednici treba da poštuju kako bi bio postignut navedeni cilj.¹⁵ Prilikom određivanja minimalnih standarda države članice treba da vode računa o specifičnim karakteristikama oblasti, klimatskim uslovima, korišćenju zemljišta, plodoredu, poljoprivrednoj praksi, sistemu poljoprivrede koji već postoji i strukturi poljoprivrednih gazdinstava uz poštovanje minimalnih standarda koji su određeni u Aneksu II Uredbe br. 1306/2013.¹⁶ Jedan od standarda za očuvanje dobrog poljoprivrednog i ekološkog stanja zemljišta predviđenih Aneksom II je održavanje nivoa organske materije u zemljištu kroz primenu odgovarajućih praksi, što uključuje i zabranu paljenja obradivih strništa, osim

¹² Götz, V. (2012). Das Recht der Gemeinsamen Agrarpolitik – Kontinuität, Wandel, Systematik. In: Martinez, J. (Hrsg.), *Die Gemeinsame Agrarpolitik vor neuen Herausforderungen*, 50 Jahre Institut für Landwirtschaftsrecht. Baden-Baden: Nomos, 14.

¹³ Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008, OJ L 347, 20. 12. 2013.

¹⁴ Detaljnije v.: Baldock, D. (2015). Twisted Together: European Agriculture, Environment and the Common Agricultural Policy. In: McMahon, J. A., Cardwell, M. N. (eds.), *Research Handbook on EU Agriculture Law*. Cheltenham: Edward Elgar Publishing, 141, 144; Danielsen, J. H. (2013). EU Agricultural Law. *Alphen aan den Rijn: Kluwer Law International*, 152–155.

¹⁵ Regulation No 1306/2013, Art. 94.

¹⁶ *Ibid.*

kada postoje razlozi koji se odnose na zdravlje biljaka.¹⁷ U objašnjenju ovog minimalnog standarda je navedeno da može biti propisana opšta zabrana spaljivanja žetvenih ostataka na oranicama, ali je državama članicama ostavljena mogućnost da propišu i dodatne detaljnije zahteve.¹⁸

U slučaju da se poljoprivrednici ne pridržavaju propisanih standarda, što obuhvata i zabranu spaljivanja žetvenih ostataka, predviđena je administrativna kazna, odnosno plaćanja u okviru sistema unakrsne usklađenosti mogu im biti smanjena ili ukinuta.¹⁹

U svim državama članicama Evropske unije postoji zabrana spaljivanja žetvenih ostataka.²⁰ Međutim, i pored toga u pojedinim delovima Evrope slučajevi paljenja strništa su česti. Analizom satelitskih snimaka u periodu od 2003. do 2015. godine zaključeno je da je spaljivanje žetvenih ostataka značajno rasprostranjeno u Rumuniji, Bugarskoj, Hrvatskoj, Grčkoj, Italiji i Portugalu, dok je u Francuskoj, Danskoj, Estoniji i Ujedinjenom Kraljevstvu zabeleženo značajno smanjenje ovakve prakse.²¹ Države u kojima su slučajevi paljenja strništa veoma retki su Nemačka, Austrija, Belgija, Holandija, Slovačka, Finska, Švedska i Irska.²² Na nivou Evropske unije je izvršena evaluacija uticaja Zajedničke poljoprivredne politike na biodiverzitet, zemljište i vodu, što je između ostalog obuhvatalo i pitanje primene propisanih standarda od strane poljoprivrednika. U dokumentu Evropske komisije od 17. decembra 2021. godine zaključeno je da sve države članice sprovedu meru zabrane spaljivanja strništa koja je predviđena u okviru standarda 6. za očuvanje dobrog poljoprivrednog i ekološkog stanja zemljišta, prema Uredbi br. 1306/2013.²³ U okviru ovog istraživanja analizirali smo na koji način je regulisana zabrana spaljivanja biljnih ostataka u državama članicama Evropske unije u kojima je paljenje strništa retka pojava, kako bismo mogli izvesti zaključke koji modeli

¹⁷ Regulation № 1306/2013, Annex II. McMahon, J. A., (2019). *EU Agricultural Law and Policy*. Cheltenham: Edward Elgar Publishing, 139.

¹⁸ Regulation № 1306/2013, Annex II.

¹⁹ Detaljnije v.: Regulation № 1306/2013, Art. 99.

²⁰ Searle, S., Bitnere, K. (2017). *Review of the impact of crop residue management on soil organic carbon in Europe*. International Council on Clean Transportation, 2. Dostupno na: https://theicct.org/sites/default/files/publications/EU-crop-residue-mgmt_ICCT-working-paper_15122017_vF.pdf

²¹ Amann, M., Gomez-Sanabria, A., Klimont, Z., Maas, R., Winiwarer, W. (2017). *Measures to address air pollution from agricultural sources*. International Institute for Applied Systems Analysis, 16. Dostupno na: https://ec.europa.eu/environment/air/pdf/clean_air_outlook_agriculture_report.pdf

²² *Ibid.*

²³ Commission staff working document Evaluation impact of the CAP on biodiversity, soil and water (natural resources), SWD(2021) 425 final, Brussels, 17. 12. 2021, 14.

moгу koristiti Srbiji na putu ka napuštanju ovakve prakse. Pored toga, deo istraživanja je posvećen i pravnoj regulativi u Hrvatskoj kao bivšoj jugoslovenskoj republici koja je uskladila svoje propise sa regulativom Evropske unije, što takođe može biti od koristi za proces u kom se nalazi Republika Srbija.²⁴

Austrija

U Austriji je u skladu sa propisima koji se odnose na implementaciju mera Zajedničke poljoprivredne politike Evropske unije zabranjeno spaljivanje žetvenih ostataka. U okviru Uredbe Federalnog ministra poljoprivrede, šumarstva, životne sredine i vodoprivrede o horizontalnim pravilima za oblast Zajedničke poljoprivredne politike određeno je da jedan od minimalnih standarda očuvanja dobrog poljoprivrednog i ekološkog stanja zemljišta predstavlja zabrana spaljivanja slame na strništima, osim ako nadležni organ iz fitosanitarnih razloga odobri izuzetak u pojedinačnim slučajevima.²⁵ Dakle, možemo zaključiti da je u Austriji zabrana spaljivanja žetvenih ostataka regulisana na isti način kao i u Uredbi br. 1306/2013 o finansiranju, upravljanju i nadzoru zajedničke poljoprivredne politike.

Spaljivanje biljnih ostataka je posebno regulisano Federalnim zakonom o spaljivanju materijala van objekata.²⁶ Propisana je zabrana spaljivanja biogenih materijala u koje između ostalog spadaju i neobrađeni materijali biljnog porekla (posebno slama), izvan objekata koji su namenjeni za to.²⁷ Međutim, ostavljena je mogućnost da predsednik pokrajinske vlade uredbom odobri vremenska i prostorna izuzeća od zabrane spaljivanja biogenih materijala u određenim slučajevima, što se između ostalog može odnositi i na

„...spaljivanje slame na strništima ako je to neophodno za uzgoj ozimog žita ili uljane repice, pod uslovom da se ne očekuje truljenje slame u zemljištu usled suše”.²⁸

²⁴ Jedan od ciljeva Strategije poljoprivrede i ruralnog razvoja Republike Srbije za period 2014–2024. godine je usklađivanje domaćih propisa sa propisima Evropske unije.

²⁵ Verordnung des Bundesministers für Land – und Forstwirtschaft, Umwelt und Wasserwirtschaft mit horizontalen Regeln für den Bereich der Gemeinsamen Agrarpolitik (Horizontale GAP-Verordnung), StF: BGBl. II № 100/2015, Anlage 2 zu para. 25 Abs. 1.

²⁶ Bundesgesetz über das Verbrennen von Materialien außerhalb von Anlagen (Bundesluftreinhaltegesetz – BLRG), BGBl. I № 137/2002, zuletzt geändert BGBl. I № 58/2017.

²⁷ Bundesgesetz über das Verbrennen von Materialien außerhalb von Anlagen, para. 1a, para. 3 (1).

²⁸ Bundesgesetz über das Verbrennen von Materialien außerhalb von Anlagen, para. 3 (4).

Ovakva odredba je u skladu sa Uredbom br. 1306/2013 u kojoj je određeno da je zabranjeno paljenje *obradivih* strništa.²⁹ Spaljivanje biljnih ostataka na poljoprivrednom zemljištu u Austriji predstavlja prekršaj za koji je zaprećena novčana kazna od 3.630 evra.³⁰

Francuska

U Francuskoj je takođe u skladu sa propisima Evropske unije zabranjeno spaljivanje žetvenih ostataka. Zakonikom o ruralnim delatnostima i pomorskom ribarstvu je propisano da poljoprivrednici koji apliciraju za plaćanja u okviru sistema unakrsne usklađenosti, koji je uspostavljen u okviru Zajedničke poljoprivredne politike Evropske unije, ne smeju da spaljuju ostatke slame, „kao ni ostatke uljarica, proteina i žitarica“³¹. Međutim, zakonom je ostavljena mogućnost da prefekt izuzetno, putem obrazložene odluke, ovlasti poljoprivrednika da izvrši spaljivanje zbog fitosanitarnih razloga.³² Prethodno navedene odredbe su u potpunosti u skladu sa Uredbom br. 1306/2013.

Spaljivanje žetvenih ostataka na poljoprivrednom zemljištu nije posebno regulisano drugim propisima. Međutim, potrebno je napomenuti da je značajna pažnja posvećena spaljivanju tzv. zelenog otpada iz bašta i parkova. U skladu sa Ekološkim zakonikom zabranjeno je spaljivanje na otvorenom biotopu koji potiče iz bašta i parkova.³³ Međutim, predviđeno je da u izuzetnim slučajevima i

„...isključivo u svrhu iskorenjivanja epifita ili eliminacije invazivnih biljnih vrsta, pojedinačna izuzeća može izdati predstavnik države“

pod uslovima određenim posebnom uredbom.³⁴ S obzirom na to da biljni ostaci nakon žetve predstavljaju takođe biootpad, ove odredbe se u širem smislu mogu odnositi i na te slučajeve. Za nepoštovanje pravila upravljanja otpadom u skladu sa Ekološkim zakonikom, što podrazumeva spaljivanje biljnih ostataka bez posebne dozvole, zaprećena kazna je dve godine zatvora i novčana kazna u iznosu od 75.000 evra.³⁵

²⁹ Regulation № 1306/2013, Annex II.

³⁰ Bundesgesetz über das Verbrennen von Materialien außerhalb von Anlagen, para. 8.

³¹ Code rural et de la pêche maritime, Art. D615-47

³² *Ibid.*

³³ Code de l'environnement, Art. L541-21-1.

³⁴ *Ibid.*

³⁵ *Ibid.*, Art. L541-46.

Nemačka

U Nemačkoj je zabrana spaljivanja žetvenih ostataka na poljoprivrednom zemljištu propisana Uredbom o ispunjavanju osnovnih zahteva i standarda u okviru propisa EU o poljoprivrednim plaćanjima. U skladu sa članom 7 koji se odnosi na očuvanje udela organske materije u zemljištu, strništa se ne smeju spaljivati.³⁶ Pored ove generalne zabrane spaljivanja žetvenih ostataka na poljoprivrednom zemljištu, postoje posebni propisi na nivou pokrajina kojima su određeni slučajevi kada je moguće dozvoliti spaljivanje biljnih ostataka, ali se ta pravila većinom odnose na biljnu proizvodnju u baštama. Jedan od primera je i Uredba vlade Saksonije o odlaganju biljnog otpada. Ukoliko nije moguće odlaganje biljnog otpada sa baštenskih nekomercijalnih parcela na način propisan uredbom, dozvoljeno je njegovo spaljivanje u skladu sa sledećim pravilima: spaljivanje biljnih ostataka

„...ne sme da prouzrokuje bilo kakvu opasnost ili smetnju za širu javnost ili komšiluk, posebno od dima ili letećih varnica. Nijedan drugi materijal, posebno kućni otpad, proizvodi od mineralnih ulja ili obloženo drvo ili drvo tretirano zaštitnim agensima, ne smeju se koristiti za paljenje ili potpoganje vatre.”³⁷

Određeni su i periodi u kojima je dozvoljeno paljenje, a to su od 1. do 30. aprila i od 1. do 30. oktobra radnim danima između 8.00 i 18.00 časova, najviše dva sata dnevno. Uz to je neophodno poštovati i minimalne distance od 1,5 km udaljenosti od aerodroma,

„...200 m od autoputa, 100 m od saveznih, seoskih i okružnih puteva, prodavnica sa zapaljivim tečnostima ili komprimovanim gasovima, kao i preduzeća u kojima se proizvode, prerađuju ili skladište eksplozivne ili zapaljive materije”³⁸.

U Bavarskoj je Uredbom o odlaganju biljnog otpada van ovlašćenih deponija, osim biljnog otpada iz bašta regulisano i spaljivanje poljoprivrednog otpada / ostataka sličnih slami. Jedan od uslova je da biljni ostaci ne mogu dovoljno istruliti u zemljištu i da to može negativno uticati na zemljište. Poljoprivrednici ne mogu sami doneti takvu odluku, već Okružni organ uprave u službenom listu objavljuje listu oblasti u kojima su ispunjeni prethodno

³⁶ Verordnung über die Einhaltung von Grundanforderungen und Standards im Rahmen unionsrechtlicher Vorschriften über Agrarzahlungen (Agrarzahlungen-Verpflichtungsverordnung), vom 17. Dezember 2014 (BAnz AT 23. 12. 2014 V1), zuletzt geändert 17. 9. 2021, I 4302, para. 7.

³⁷ Verordnung der Sächsischen Staatsregierung über die Entsorgung von pflanzlichen Abfällen (Pflanzenabfallverordnung – PflanzAbfV) vom 25. September 1994, (SächsGVBl. S. 1577), para. 4 (2) 1–2.

³⁸ Pflanzenabfallverordnung, para. 4 (2) 3.

navedeni uslovi.³⁹ U drugim oblastima lice koje namerava da spaljuje biljne ostatke mora podneti prijavu opštini najmanje sedam dana pre spaljivanja, nakon čega okružni organ uprave biva obavešten i on može doneti odluku o zabrani spaljivanja ukoliko nisu ispunjeni propisani uslovi u konkretnom slučaju.⁴⁰ Uredbom je određeno da se spaljivanje može vršiti samo radnim danima od 6.00 do 18.00 časova, pri čemu se moraju sprečiti opasnosti od dima i širenja vatre, uz poštovanje propisane udaljenosti od stambenih zgrada i drugih objekata, puteva i šuma.⁴¹ Požar je neophodno stalno nadzirati i žar mora biti ugašen najkasnije pre mraka. Radi zaštite tla, faune i flore mora se osigurati da veće površine ne budu istovremeno zapaljene, da vatra zahvata površinu zemljišta što je kraće moguće, bez prekomernog sagorevanja.⁴² Spaljivanje biljnih ostataka suprotno propisima predstavlja prekršaj za koji je u skladu sa uredbom i Zakonom za unapređenje cirkularne ekonomije i osiguranje ekološki prihvatljivog upravljanja otpadom predviđena novčana kazna do 100.000 evra.⁴³

Hrvatska

U Hrvatskoj je takođe saglasno propisima Evropske unije zabranjeno spaljivanje žetvenih ostataka. Prema Pravilniku o višestrukoj sukladnosti korisnici podrške u skladu sa Uredbom Evropske unije br. 1306/2013 imaju obavezu da održavaju poljoprivredno zemljište u dobrom poljoprivrednom i ekološkom stanju, što između ostalog podrazumeva zabranu spaljivanja žetvenih ostataka sa poljoprivrednih površina.⁴⁴ Predviđen je i izuzetak od ovog pravila, odnosno

„...spaljivanje žetvenih ostataka dopušteno je samo u cilju sprečavanja širenja ili suzbijanja organizama štetnih za bilje o čemu postoji službena naređena mjera.”⁴⁵

³⁹ Verordnung über die Beseitigung von pflanzlichen Abfällen außerhalb zugelassener Beseitigungsanlagen (Bayerische Pflanzenabfall-Verordnung – PflAbfV) in der Fassung der Bekanntmachung vom 13. März 1984. (GVBl. S. 100), zuletzt geändert 23. Mai 2017. (GVBl. S. 184), para. 2 (2).

⁴⁰ Bayerische Pflanzenabfall-Verordnung, para. 2 (2).

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Verordnung über die Beseitigung von pflanzlichen Abfällen außerhalb zugelassener Beseitigungsanlagen, para. 5. Gesetz zur Förderung der Kreislaufwirtschaft und Sicherung der umweltverträglichen Bewirtschaftung von Abfällen (Kreislaufwirtschaftsgesetz – KrWG) vom 24. Februar 2012. (BGBl. I S. 212), zuletzt geändert 10. August 2021. (BGBl. I S. 3436), para. 69.

⁴⁴ U skladu sa Pravilnikom o višestrukoj sukladnosti „Žetvenim ostacima ne smatraju se ostaci nastali orezivanjem trajnih nasada”. Pravilnik o višestrukoj sukladnosti, *Narodne novine*, br. 113/2019, dodatak II.

⁴⁵ *Ibid.*

U Pravilniku o agrotehničkim mjerama postoji gotovo istovetna odredba u vezi sa zabranom spaljivanja žetvenih ostataka, odnosno

„...žetveni ostaci ne smiju se spaljivati, a njihovo je spaljivanje dopušteno samo u cilju sprečavanja širenja ili suzbijanja organizama štetnih za bilje uz provođenje mjera zaštite od požara sukladno posebnim propisima.”⁴⁶

Pitanje spaljivanja žetvenih ostataka je uređeno i odlukama o agrotehničkim mjerama i mjerama zaštite od požara koje su donete na nivou opština. U svim odlukama je zabrana spaljivanja strništa regulisana na isti način kao što je to učinjeno u prethodno navedenim pravilnicima, ali pojedine odluke pored toga sadrže i detaljnije odredbe o izuzecima od ove zabrane. Ta posebna pravila na lokalnom nivou se odnose na spaljivanje korova i biljnog otpada uz posebno odobrenje vatrogasnog društva u vezi sa mestom i vremenom spaljivanja i uz poštovanje propisanih uslova.⁴⁷ U pojedinim opštinama je propisano da ukoliko se spaljivanje vrši na većim površinama mora biti osigurano dežurstvo vatrogasaca sa opremom.⁴⁸ Neki od uslova su da spaljivanje mora biti vršeno na „primerenoj udaljenosti” od šumskog zemljišta, odnosno na udaljenosti od 200 m, na udaljenosti najmanje 30 m od stambenih objekata,⁴⁹ na primerenoj udaljenosti od susednih parcela, dalekovoda.⁵⁰ Zemljište na kom se vrši spaljivanje mora biti očišćeno od trave i zapaljivih materijala. Neophodno je da budu označene osobe koje pale vatru i one kod sebe moraju imati osnovna sredstva i opremu za gašenje požara, a nakon sagorevanja dužne su da pregledaju mesto, ugase vatru u potpunosti i tek nakon toga smeju da napuste mesto spaljivanja.⁵¹ U nekim opštinama je propisana generalna zabrana spaljivanja korova i biljnog otpada na poljoprivrednom zemljištu u periodu žetve i sezone zrenja poljoprivrednih kultura,⁵² dok je u pojedinim odlukama preciziran period – od 1. juna do 30. septembra.⁵³ U nekim opštinama postoje i

⁴⁶ Pravilnik o agrotehničkim mjerama, *Narodne novine*, br. 22/2019, čl. 9 (2).

⁴⁷ Odluka o agrotehničkim mjerama i mjerama za uređivanje i održavanje poljoprivrednih rudina i mjerama zaštite od požara na području Općine Tovarnik, 23. 5. 2020, čl. 22.

⁴⁸ Odluka o agrotehničkim mjerama i mjerama za uređivanje i održavanje poljoprivrednih rudina na području Općine Lipovljani, 28. 5. 2018, čl. 11.

⁴⁹ *Ibid.*

⁵⁰ Odluka o agrotehničkim mjerama i mjerama za uređivanje i održavanje poljoprivrednih rudina i mjerama zaštite od požara na području Općine Tovarnik, čl. 22.

⁵¹ *Ibid.*; Odluka o agrotehničkim mjerama i mjerama za uređenje i održavanje rudina te mjerama zaštite od požara na poljoprivrednom zemljištu na području Općine Gola, 31. 7. 2019, čl. 20.

⁵² Odluka o agrotehničkim mjerama i mjerama za uređenje i održavanje rudina te mjerama zaštite od požara na poljoprivrednom zemljištu na području Općine Gola, čl. 20.

⁵³ Odluka o agrotehničkim mjerama i mjerama za uređivanje i održavanje poljoprivrednih rudina i mjerama zaštite od požara na području Općine Tovarnik, čl. 23.

dodatna ograničenja kao što je zabrana spaljivanja tokom noći između 19.00 i 5.00 časova, kao i za vreme jakog vetra.⁵⁴ Nepoštovanje navedenih pravila predstavlja prekršaj, a visina zaprećene novčane kazne se veoma razlikuje među opštinama. Za pravno lice je u zavisnosti od opštine zaprećena novčana kazna od 500 do 10.000 kuna, za odgovorno lice u pravnom licu i za preduzetnika od 100 do 2.500 kuna, a za fizičko lice od 100 do 1.000 kuna.⁵⁵ Ukoliko spaljivanjem žetvenih ostataka bude izazvan požar primenjuju se i odredbe Zakona o zaštiti od požara, kojima je propisano da je svako fizičko i pravno lice odgovorno za „neprovođenje mjera zaštite od požara, izazivanje požara, kao i za posljedice koje iz toga nastanu”⁵⁶. Kazna za prekršaj fizičkog lica u slučaju izazivanja požara je u iznosu od 15.000 do 150.000 kuna ili kazna zatvora do 60 dana.⁵⁷

Zabrana spaljivanja žetvenih ostataka na poljoprivrednom zemljištu u državama članicama Evropske unije – zaključci

Iz prethodne analize pravnih propisa u državama članicama Evropske unije možemo zaključiti da se u regulisanju zabrane spaljivanja žetvenih ostataka sve države oslanjaju na Zajedničku poljoprivrednu politiku Evropske unije. Odredbe Uredbe br. 1306/2013 o finansiranju, upravljanju i nadzoru zajedničke poljoprivredne politike koje se odnose na zabranu paljenja obradivih strništa, osim kada postoje razlozi koji se odnose na zdravlje biljaka⁵⁸ na gotovo istovetan način su prenete u regulativu država članica.⁵⁹ U svakoj od država čije propise smo analizirali postoje izuzeci od zabrane spaljivanja, a oni su posebno regulisani u Austriji, Nemačkoj i Hrvatskoj. Spaljivanje biljnih ostataka u izuzetnim slučajevima je veoma precizno regulisano u Nemačkoj i Hrvatskoj. Dakle, pored generalne zabrane u državama članicama Evropske unije postoji jedna doza fleksibilnosti koja izostaje u Srbiji, o čemu će biti više

⁵⁴ Odluka o agrotehničkim mjerama i mjerama za uređenje i održavanje rudina te mjerama zaštite od požara na poljoprivrednom zemljištu na području Općine Gola, čl. 21.

⁵⁵ Uporedi: Odluka o agrotehničkim mjerama i mjerama za uređivanje i održavanje poljoprivrednih rudina i mjerama zaštite od požara na području Općine Tovarnik, čl. 25–26; Odluka o agrotehničkim mjerama i mjerama za uređenje i održavanje rudina te mjerama zaštite od požara na poljoprivrednom zemljištu na području Općine Gola, čl. 23; Odluka o agrotehničkim mjerama i mjerama za uređivanje i održavanje poljoprivrednih rudina na području Općine Lipovljani, čl. 16.

⁵⁶ Zakon o zaštiti od požara, *Narodne novine*, br. 92/2010, čl. 8 (3).

⁵⁷ *Ibid.*, čl. 61.

⁵⁸ Regulation No 1306/2013, Annex II.

⁵⁹ *Ibid.*

reči u narednim odeljcima ovog rada. U svim državama su za spaljivanje biljnih ostataka protivno zabrani predviđene novčane kazne.

S obzirom na to da države članice imaju istu polaznu osnovu u vidu Uredbe br. 1306/2013 o finansiranju, upravljanju i nadzoru zajedničke poljoprivredne politike,⁶⁰ možemo zaključiti da se razlike u pojavi požara i rasprostranjenosti prakse spaljivanja žetvenih ostataka, o čemu je bilo reči na početku ovog dela, javljaju usled razlike u primeni propisa. S obzirom na to da se u svim državama članicama primenjuje sistem unakrsne usklađenosti i da je sankcija za nepridržavanje standarda u smanjenju ili ukidanju plaćanja poljoprivrednicima, broj slučajeva u kojima je primenjena ta sankcija usled spaljivanja žetvenih ostataka može biti jedan od pokazatelja kontrole primene propisa i inspekcijskog rada. Istovremeno to može biti indikativno i u pogledu učestalosti ovih problema u pojedinim državama članicama. Na osnovu tih podataka bilo bi moguće dati odgovor na pitanje kakav doprinos ima ova mera u praksi, odnosno koliko utiče na sprečavanje prakse spaljivanja žetvenih ostataka. Međutim, na nivou Evropske unije nema takvih podataka.

ZABRANA SPALJIVANJA ŽETVENIH OSTATAKA U SRBIJI

U Srbiji je zabrana spaljivanja žetvenih ostataka regulisana u okviru više propisa. U skladu sa osnovnim zakonom kojim su uređena pitanja u vezi sa korišćenjem i zaštitom poljoprivrednog zemljišta, Zakonom o poljoprivrednom zemljištu, zabranjeno je pričinjavanje poljske štete, što između ostalog podrazumeva zabranu

„...oštećenja koja dovode do smanjenja produktivnosti, strukture i slojeva poljoprivrednog zemljišta, kao i svako drugo oštećenje na poljoprivrednom zemljištu.”⁶¹

⁶⁰ Kao što je prethodno rečeno Evropska komisija je u dokumentu od 17. decembra 2021. godine zaključila da sve države članice imaju odredbe o zabrani spaljivanja strništa koja je predviđena u okviru standarda 6. za očuvanje dobrog poljoprivrednog i ekološkog stanja zemljišta prema Uredbi br. 1306/2013 i da je sprovode. (Commission staff working document Evaluation impact of the CAP on biodiversity, soil and water (natural resources), SWD(2021) 425 final, Brussels, 17. 12. 2021, 14). Međutim, satelitski snimci ukazuju da se ova zabrana u prethodnim godinama nije u potpunosti sprovodila u svim državama članicama. Amann, M., Gomez-Sanabria, A., Klimont, Z., Maas, R., Winiwarter, W. (2017). *Measures to address air pollution from agricultural sources*. International Institute for Applied Systems Analysis, 16. Dostupno na: https://ec.europa.eu/environment/air/pdf/clean_air_outlook_agriculture_report.pdf

⁶¹ Zakon o poljoprivrednom zemljištu, *Službeni glasnik RS*, br. 62/2006, 65/2008. – dr. zakon, 41/2009, 112/2015, 80/2017. i 95/2018. – dr. zakon, čl. 28.

Imajući u vidu prethodno analizirane negativne posledice spaljivanja žetvenih ostataka i degradaciju zemljišta usled takvih aktivnosti, možemo zaključiti da paljenje strništa predstavlja vid poljske štete. Pored ove opšte odredbe o poljskoj šteti Zakonom o poljoprivrednom zemljištu je i posebno zabranjeno spaljivanje organskih ostataka nakon žetve. Propisivanje konkretnih mera za zaštitu od spaljivanja žetvenih ostataka na poljoprivrednom zemljištu i za zaštitu od poljske štete je u nadležnosti jedinica lokalne samouprave.⁶² Spaljivanje organskih ostataka na poljoprivrednom zemljištu nakon žetve useva i pričinjavanje poljske štete predstavlja prekršaj. Zaprećene novčane kazene su u iznosu od 100.000 do 1.000.000 dinara za privredno društvo, preduzeće ili drugo pravno lice, od 5.000 do 50.000 dinara za odgovorno lice u privrednom društvu, preduzeću ili drugom pravnom licu, a za preduzetnika je predviđena novčana kazna u iznosu od 25.000 do 250.000 dinara. Ukoliko je u pitanju fizičko lice koje je vlasnik ili korisnik poljoprivrednog zemljišta zaprećeni iznos novčane kazne je od 5.000 do 50.000 dinara.⁶³ Kontrola načina korišćenja i zaštite poljoprivrednog zemljišta u skladu sa Zakonom o poljoprivrednom zemljištu je u nadležnosti poljoprivredne inspekcije.

Jedna od jedinica lokalne samouprave u kojoj je primena mera zaštite poljoprivrednog zemljišta i kontrole sprovođenja tih mera regulisana na detaljan način je opština Žabalj. Odluka o merama zaštite poljoprivrednog zemljišta i organizovanju poljočuvarske službe na području Opštine Žabalj sadrži odredbu o zabrani spaljivanja organskih ostataka posle žetve, u skladu sa Zakonom o poljoprivrednom zemljištu.⁶⁴ Određeno je da poljočuvarska služba obavlja poslove obezbeđenja organizovane zaštite od spaljivanja organskih ostataka na poljoprivrednom zemljištu i zaštite od poljske štete. Čuvar polja, između ostalog, treba da spreči spaljivanje ostataka useva nakon žetve.⁶⁵ Odlukom su precizno određene i dužnosti poljočuvara prilikom otkrivanja poljske štete, kao što je sačinjavanje zapisnika, fotografisanje poljoprivrednog zemljišta na kome je pričinjena šteta i dostavljanje zapisnika sa dokazima rukovodiocu poljočuvarske službe koji nakon toga zapisnik dostavlja vlasniku, odnosno korisniku poljoprivrednog zemljišta na kome je šteta nastala i poljoprivrednom inspektoru, radi preduzimanja daljih mera u skladu sa Zakonom o poljoprivrednom zemljištu.⁶⁶ U slučaju da čuvar polja nije utvrdio da je na poljoprivrednom zemljištu pričinjena poljska šteta, vlasnik, odnosno kori-

⁶² Zakon o poljoprivrednom zemljištu, čl. 28.

⁶³ *Ibid.*, čl. 85.

⁶⁴ Odluka o merama zaštite poljoprivrednog zemljišta i organizovanju poljočuvarske službe na području Opštine Žabalj, *Službeni list opštine Žabalj*, br. 18/2018, čl. 4.

⁶⁵ *Ibid.*, čl. 6.

⁶⁶ *Ibid.*, čl. 12, 14.

snik poljoprivrednog zemljišta štetu treba da prijavi poljočuvarskoj službi.⁶⁷ Ukoliko je poznat izvršilac nedozvoljene radnje, dužnost rukovodioca poljočuvarske službe je da pokrene prekršajni postupak protiv tog lica.⁶⁸ Možemo zaključiti da su dužnosti poljočuvara veoma precizno regulisane i da bi poštovanjem i primenom Odluke o merama zaštite poljoprivrednog zemljišta i organizovanju poljočuvarske službe na području Opštine Žabalj u praksi trebalo da bude sprečeno spaljivanje žetvenih ostataka.

Jedna od sankcija za lica koja spaljuju žetvene ostatke na poljoprivrednom zemljištu, koja bi trebalo da utiče na sprečavanje ovakve prakse među poljoprivrednicima, određena je Pravilnikom o upisu u registar poljoprivrednih gazdinstava i obnovi registracije, kao i o uslovima za pasivan status poljoprivrednog gazdinstva. Propisano je da poljoprivredno gazdinstvo prelazi u pasivan status u slučaju nepridržavanja propisa, a među taksativno navedenim razlozima je i spaljivanje organskih ostataka posle žetve useva.⁶⁹ Ova vrsta sankcije je veoma značajna jer poljoprivredna gazdinstva koja su u pasivnom statusu ne mogu ostvarivati mere podsticaja za razvoj poljoprivredne proizvodnje i zahtev takvog poljoprivrednog gazdinstva za korišćenje podsticaja će biti odbačen bez razmatranja. Pored toga zemljišni fond gazdinstva u pasivnom statusu ne može služiti za upis drugog poljoprivrednog gazdinstva u registar.⁷⁰ Pravilnikom je određeno da, ukoliko je rešenje o pasivnom statusu poljoprivrednog gazdinstva doneto zbog spaljivanja žetvenih ostataka, gazdinstvo ostaje u pasivnom statusu u periodu od tri godine. Posle isteka godinu i po dana poljoprivredno gazdinstvo može da podnese zahtev za privremeni prestanak pasivnog statusa uz navođenje opravdanih razloga za ponovno stavljanje u aktivan status, a predlog odluke o tome donosi Komisija za ocenu pasivnog statusa. U pravilniku nije precizirano šta konkretno mogu biti opravdani razlozi za prestanak pasivnog statusa, ali je predviđeno da komisija treba da uzme u obzir sve okolnosti slučaja, a posebno da li je usled razloga zbog kojih je prvobitno doneta odluka o pasivnom statusu nastupila šteta i da li ju je gazdinstvo otklonilo.⁷¹ Ukoliko uzmemo u obzir prethodno definisanje poljske štete može se zaključiti da spaljivanje žetvenih ostataka predstavlja degradaciju i utiče na smanjenje plodnosti poljoprivrednog zemljišta, ali je isto tako bitno uzeti u obzir i način na koji se

⁶⁷ Odluka o merama zaštite poljoprivrednog zemljišta i organizovanju poljočuvarske službe na području Opštine Žabalj, čl. 13.

⁶⁸ *Ibid.*, čl. 14.

⁶⁹ Pravilnik o upisu u registar poljoprivrednih gazdinstava i obnovi registracije, kao i o uslovima za pasivan status poljoprivrednog gazdinstva, *Službeni glasnik RS*, br. 17/2013, 102/2015, 6/2016, 46/2017, 44/2018. – dr. zakon, 102/2018. i 6/2019, čl. 15.

⁷⁰ *Ibid.*, čl. 15.

⁷¹ *Ibid.*, čl. 17.

poljoprivredno gazdinstvo kasnije odnosilo prema zemljištu i šta je učinjeno kako bi se doprinelo poboljšanju plodnosti zemljišta.

Prethodno analizirane odredbe Pravilnika o upisu u registar poljoprivrednih gazdinstava i obnovi registracije, kao i o uslovima za pasivan status poljoprivrednog gazdinstva mogu se uporediti sa Uredbom br. 1306/2013 o finansiranju, upravljanju i nadzoru zajedničke poljoprivredne politike, s obzirom na to da je pravilnikom predviđena sankcija za spaljivanje žetvenih ostataka u vidu onemogućavanja konkurisanja za mere podsticaja, što je slično sankciji predviđenoj u okviru sistema unakrsne usklađenosti, ali je mera u Srbiji stroža jer nije ostavljena mogućnost umanjenja podsticaja već oni u potpunosti izostaju. U Srbiji je započeto usklađivanje domaćih propisa sa propisima u okviru Zajedničke poljoprivredne politike, kako je i predviđeno Strategijom poljoprivrede i ruralnog razvoja Republike Srbije za period od 2014. do 2024. godine.⁷² Međutim, nije uspostavljen sistem unakrsne usklađenosti kao u Evropskoj uniji, ali je deo principa na kojima se on zasniva sadržan u Zakonu o poljoprivredi i ruralnom razvoju⁷³ i Zakonu o podsticajima u poljoprivredi i ruralnom razvoju. U skladu sa odredbama Zakona o podsticajima u poljoprivredi i ruralnom razvoju korisnik podsticaja je dužan, između ostalog, da se pridržava

„...propisa kojima se uređuju standardi kvaliteta životne sredine, zaštita javnog zdravlja, zaštita zdravlja životinja i biljaka, zaštita dobrobiti životinja i zaštita poljoprivrednog zemljišta”⁷⁴,

međutim ovo pravilo u zakonu nije dalje precizirano kao što je to učinjeno u Uredbi br. 1306/2013 gde je zarad očuvanja dobrog poljoprivrednog i ekološkog stanja zemljišta određena zabrana paljenja obradivih strništa. Pored toga, u Zakonu o podsticajima u poljoprivredi i ruralnom razvoju nije predviđeno umanjenje ili ukidanje podsticaja u slučaju da se korisnik ne pridržava pravila, ali je sankcija za nepridržavanje predviđena prethodno analiziranim odredbama Pravilnika o upisu u registar poljoprivrednih gazdinstava i obnovi registracije, kao i o uslovima za pasivan status poljoprivrednog gazdinstva.

Pored prethodno analiziranih propisa u oblasti poljoprivrede, u Srbiji je zabrana spaljivanja žetvenih ostataka neposredno, odnosno posredno regulisana i drugim propisima. U skladu sa Zakonom o zaštiti od požara zabranjeno je spaljivati ostatke strnih useva i biljne ostatke. Ukoliko lice protivno zabrani vrši spaljivanje i time izazove požar, ima obavezu da nadoknadi troškove

⁷² Strategija poljoprivrede i ruralnog razvoja Republike Srbije za period 2014– 2024. godine, *Službeni glasnik RS*, br. 85/2014.

⁷³ V.: Zakon o poljoprivredi i ruralnom razvoju, *Službeni glasnik RS*, br. 41/2009, 10/2013. – dr. zakon, 101/2016, 67/2021. – dr. zakon i 114/2021, čl. 18.

⁷⁴ Zakon o podsticajima u poljoprivredi i ruralnom razvoju, *Službeni glasnik RS*, br. 10/2013, 142/2014, 103/2015. i 101/2016, čl. 10.

koje je vatrogasno-spasilačka jedinica imala u konkretnom slučaju.⁷⁵ Pored toga spaljivanje ostataka strnih useva i biljnih ostataka na otvorenom prostoru predstavlja prekršaj, a zaprećena novčana kazna za fizičko lice je u iznosu od 10.000 dinara.⁷⁶ Zakonom su posebno regulisane dužnosti poljoprivrednika prilikom sprovođenja žetvenih radova kako bi strni usevi bili zaštićeni od požara. Konkretno, propisano je da „privredno društvo, zemljoradnička zadruga, ustanova ili drugo pravno lice, preduzetnik i poljoprivrednik” treba da preduzme posebne mere zaštite strnih useva od požara, što podrazumeva

„...organizovanje stalnog dežurstva; organizovanje osmatračke službe; organizovanje službe veze i obaveštavanja; opremanje mehanizacije odgovarajućom protivpožarnom opremom; kontrola protivpožarne opreme; kontrola ispravnosti mehanizacije; kontrola uskladištavanja useva.”⁷⁷

Propisano je i da ministar poljoprivrede treba da donese „propis kojim bliže uređuje mere zaštite od požara u poljoprivredi.”⁷⁸ Rok za donošenje podzakonskih akata, među kojima je i ovaj propis je bio šest meseci od dana stupanja na snagu zakona, međutim takav propis još uvek nije donet. Tokom istraživanja smo došli do zaključka da se jedinice lokalne samouprave prilikom donošenja godišnjeg plana (programa) zaštite strnih useva od požara oslanjaju na Pravilnik o posebnim merama zaštite od požara u poljoprivredi iz 1984. godine⁷⁹ kao što je to slučaj na primer u opštini Žabalj i opštini Žitište.⁸⁰ Međutim, taj pravilnik je donet na osnovu Zakona o zaštiti od požara iz 1982. godine koji više nije na snazi, a pojedine odredbe pravilnika nisu u skladu sa važećim propisima. Na primer, u Pravilniku o posebnim merama zaštite od požara u poljoprivredi je navedeno

„...strnjika ili slama mogu se spaliti na njivi ako je prethodno obezbeđeno prisustvo i nadzor radi sprečavanja požara. O paljenju strnjike ili slame blagovremeno, a najkasnije 24 časa pre paljenja obaveštava se teritorijalna vatrogasna jedinica.”⁸¹

Navedena odredba je u potpunosti u suprotnosti sa važećim propisima i zabranom spaljivanja žetvenih ostataka. Ove činjenice ukazuju na potrebu hitnog

⁷⁵ Zakon o zaštiti od požara, *Službeni glasnik RS*, br. 111/2009, 20/2015, 87/2018. i 87/2018 – dr. zakoni, čl. 50.

⁷⁶ *Ibid.*, čl. 84.

⁷⁷ *Ibid.*, čl. 49.

⁷⁸ *Ibid.*, čl. 49.

⁷⁹ Pravilnik o posebnim merama zaštite od požara u poljoprivredi, *Službeni glasnik SRS*, br. 27/1984.

⁸⁰ V.: Plan zaštite strnih useva od požara za 2021. godinu, *Službeni list Opštine Žabalj*, br. 19/2021; Program zaštite strnih useva od požara opštine Žitište za 2020. godinu.

⁸¹ Pravilnik o posebnim merama zaštite od požara u poljoprivredi, *Službeni glasnik SRS*, br. 27/1984, čl. 4.

donošenja novog pravilnika kojim bi bile regulisane mere zaštite od požara u poljoprivredi u skladu sa aktuelnom pravnom regulativom kako bi jedinice lokalne samouprave mogle u skladu sa njim da donose svoje planove i programe zaštite.

Jedna od mera koja je predviđena planovima (programima) jedinica lokalnih samouprava za zaštitu strnih useva od požara je i obaveštavanje građana o zabrani paljenja žetvenih ostataka i paljenja vatre na otvorenom. To je potrebno učiniti putem medija i postavljanjem obaveštenja na mestima javnog okupljanja.⁸² Pored aktivnosti na lokalnom nivou, potrebno je napomenuti da je Ministarstvo zaštite životne sredine pokrenulo kampanju „Ne pali strnjiku” kako bi podigli svest građana o opasnosti i štetnosti ovakve prakse.

Iz analiza godišnjih planova zaštite strnih useva od požara možemo zaključiti da opštinska veća iz godine u godinu donose istovetne planove, nekada čak ne menjajući ni ukupne brojeve površina zasejanih pod različitim poljoprivrednim kulturama.⁸³ Može se postaviti pitanje da li donošenje planova i programa zaštite strnih useva od požara predstavlja ispunjenje formalnosti ili zaista predstavlja način za sprečavanje nastanka požara i sprečavanje prakse spaljivanja žetvenih ostataka. Imajući u vidu veliki broj požara koji se svake godine javlja u periodu žetve, o čemu je bilo reči na početku ovog rada, možemo zaključiti da je potrebno izmeniti postojeću praksu i prilagoditi planove i programe stanju na terenu, odnosno izmeniti delovanje u cilju sprečavanja spaljivanja i nastanka požara. Usvajanje gotovo identičnih planova na nivou jedinica lokalne samouprave iz godine u godinu ne dovodi do rešenja problema sa kojima se opštine i građani suočavaju svake godine.

U kontekstu izazivanja požara putem spaljivanja žetvenih ostataka potrebno je pomenuti i odredbe Krivičnog zakonika. Naime, u slučaju paljenje strnike počinioci mogu odgovarati za krivično delo izazivanje opšte opasnosti. Krivičnim zakonikom je propisano

„...ko požarom, (...) ili kakvom drugom opšteopasnom radnjom ili opšteopasnim sredstvom izazove opasnost za život ili telo ljudi ili za imovinu većeg obima kazniće se zatvorom od šest meseci do pet godina i novčanom kaznom.”⁸⁴

⁸² Kao primer mesta na kojima treba postaviti obaveštenja o zabrani paljenja navedeni su „dom zdravlja, pijaca, veće prodavnice, pošta, mesne zajednice”. Plan zaštite strnih useva od požara za 2021. godinu, *Službeni list Opštine Žabalj*, br. 19/2021, t. 4.

⁸³ Do zaključka o istovetnim površinama zasejanim pod istim poljoprivrednim kulturama se došlo analizom i poređenjem Planova zaštite strnih useva od požara Opštine Žabalj u periodu od 2018. do 2021. godine. Konkretno, u planovima je procenjeno da je u periodu od četiri godine svake godine „na teritoriji opštine zasejano oko 6200 ha pšenicom i 720 ha ječmom.” V.: t. 2. Planova zaštite strnih useva od požara Opštine Žabalj.

⁸⁴ Krivični zakonik, *Službeni glasnik RS*, br. 85/2005, 88/2005. – ispr., 107/2005 – ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016. i 35/2019, čl. 278, st. 1.

Ukoliko je krivično delo izazivanja opšte opasnosti učinjeno iz nehata kazna zatvora je do tri godine.⁸⁵ Kada usled ovog dela nastupi

„...teška telesna povreda nekog lica ili imovinska šteta velikih razmera, učinilac će se kazniti zatvorom od jedne do osam godina”,

a ukoliko nastupi

„...smrt jednog ili više lica, učinilac će se kazniti zatvorom od dve do dvanaest godina.”⁸⁶

ZAKLJUČAK

Na osnovu rezultata istraživanja možemo zaključiti da je u državama članicama Evropske unije zabrana spaljivanja žetvenih ostataka prevashodno regulisana u okviru mera Zajedničke poljoprivredne politike. Ostavljena je mogućnost odstupanja od ove zabrane u izuzetnim slučajevima, što predstavlja jednu vrstu fleksibilnosti koja ne postoji u propisima Republike Srbije. Među državama članicama Evropske unije postoje razlike u pogledu nivoa preciznosti regulisanja ovog pitanja, ali bez obzira na to, u većini država, posebno starih država članica, pravila o zabrani spaljivanja žetvenih ostataka se poštuju.

Iz prethodne analize možemo zaključiti da je u Srbiji spaljivanje žetvenih ostataka regulisano na veoma striktan način, posebno u poređenju sa regulativom Evropske unije. Spaljivanje je u potpunosti zabranjeno bez ostavljanja mogućnosti da bude sprovedeno u posebnim slučajevima kao što je to učinjeno u državama članicama Evropske unije. Zabrana spaljivanja žetvenih ostataka je regulisana ne samo propisima u oblasti poljoprivrede već i drugim zakonima, što govori u prilog činjenici da je u pitanju veoma značajan višedecenijski problem koji izlazi van okvira poljoprivrede. Prekršajna odgovornost i novčane kazne su u skladu sa pravilima koja postoje i u državama članicama Evropske unije. Jedinicama lokalne samouprave je data značajna uloga, posebno kada je u pitanju donošenje odluka o merama zaštite poljoprivrednog zemljišta i organizovanju poljočuvarske službe i programa zaštite strnih useva od požara, što je takođe u skladu sa praksom koja postoji u pojedinim državama Evropske unije. Možemo zaključiti da je zabrana spaljivanja žetvenih ostataka u Srbiji regulisana na dobar način, ali je potrebno doneti podzakonske akte o kojima je bilo reči u prethodnom odeljku. Primena postojećih propisa bi trebalo da spreči praksu spaljivanja žetvenih ostataka i nastanak štetnih

⁸⁵ Krivični zakonik, čl. 278, st. 5.

⁸⁶ *Ibid.*, čl. 288.

posledica o kojima je bilo reči na početku ovog rada. Međutim, podaci o broju požara izazvanih paljenjem strništa svake godine govore upravo suprotno. Mišljenja smo da se problem ne nalazi u propisima, već da njihova adekvatna primena u praksi izostaje. Prilikom istraživanja smo pokušali da utvrdimo kakvo je stanje u sudskoj praksi, međutim došli smo do zaključka da je presuda u vezi sa spaljivanjem žetvenih ostataka veoma malo. To može takođe biti jedan od pokazatelja izostanka primene propisa, odnosno kažnjavanja počinitelja. Potrebno je izmeniti stanje u praksi i osigurati primenu propisa, u čemu značajnu ulogu imaju inspekcijske službe. Pored toga, treba imati u vidu da nisu uvek vlasnici, odnosno korisnici poljoprivrednog zemljišta lica koja spaljuju biljne ostatke. Postoji značajan broj slučajeva u kojima lica spaljuju žetvene ostatke na tuđem zemljištu kako bi lakše prikupili klipove kukuruza sa poljoprivrednog zemljišta.

Pored sprovođenja propisa neophodno je raditi i na podizanju svesti građana o negativnim posledicama spaljivanja žetvenih ostataka. U tom cilju se poslednjih godina sprovodi sve više kampanja u kojima se prevashodno ističu negativne posledice spaljivanja žetvenih ostataka kako bi se građani odvratili od primene takve prakse. Promena mišljenja i shvatanje da su ovakve aktivnosti veoma štetne je od izuzetnog značaja imajući u vidu da je u pitanju višedecenijska praksa koja se prenosila sa generacije na generaciju stvarajući neku vrstu tradicije. Pored toga, neophodno je imati u vidu da pojedini poljoprivrednici ističu finansijske razloge zbog kojih primenjuju ovakvu praksu. Cena goriva i nedostatak adekvatne mehanizacije utiču na pojedine poljoprivrednike da spaljivanjem žetvenih ostataka „olakšaju” rešenje problema čišćenja njive za predstojeću setvu, što ukazuje na potrebu pomoći poljoprivrednicima u ovom domenu. U pojedinim slučajevima spaljivanjem strništa poljoprivrednici pokušavaju da se izbore sa štetočinama i prouzrokovanim bolestima. Ovakvi izuzeci od zabrane spaljivanja nisu posebno regulisani u analiziranim domaćim propisima i u tom domenu postoji prostor za poboljšanje domaće regulative u skladu sa evropskom.

Na kraju treba dodati da je problem spaljivanja žetvenih ostataka u Srbiji u fokusu istraživanja stručnjaka iz oblasti poljoprivrede. Međutim, primena mera koje doprinose očuvanju plodnosti zemljišta i sprečavanju negativnih posledica određenih aktivnosti kao što je spaljivanje žetvenih ostataka zavisi i od propisa u ovoj oblasti i sankcija u slučaju njihovog nepoštovanja, što ukazuje i na važnu ulogu pravnik. O zainteresovanosti pravne profesije za ovu problematiku govori podatak do kog smo došli tokom istraživanja. Naime, analizirajući postojeću literaturu u ovoj oblasti zaključili smo da u Srbiji nema stručnih i naučnih radova napisanih od strane pravnik u vezi sa ovom temom.

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- Zakon o podsticajima u poljoprivredi i ruralnom razvoju, *Službeni glasnik RS*, br. 10/2013, 142/2014, 103/2015. i 101/2016.
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PROHIBITION ON THE BURNING OF CROP RESIDUES ON AGRICULTURAL LAND**

ABSTRACT: Burning plant residues is a practice that some farmers apply on agricultural land after the harvest. It causes numerous harmful effects on the land, environment, climate, and can endanger the lives of people, animals and property. This paper analyzes the legal regulations of the European Union and individual member states in order to find an answer to the question of how to regulate the ban on burning crop residues. Given that a large number of fires occur in the Republic of Serbia every year in the post-harvest period, special attention is paid to the analysis of domestic regulations to find answers to the question of whether this decades-long problem is caused by inadequate legal regulations or whether the existing regulations are not applied properly.

Keywords: agricultural land, burning of crop residues, fire protection, Common Agricultural Policy of the European Union, cross-compliance, environmental protection

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INTRODUCTION

In Serbia, a large number of fires occur every year in the after-harvest period. Citizens mostly learn about their scale and tragic consequences through the media, and the inhabitants of rural areas witness the practice of burning stubble that is passed down from generation to generation. For example, one such media report stated that 880 hectares of land were devastated by fire in the area near a village close to the city of Zrenjanin due to the spread of fires from fields in 2018, and the fire also affected the Special Nature Reserve Stari Begej - Carska bara.¹ Due to the thick smoke that spread from the surrounding fields on the Belgrade-Niš highway in 2018, there was a chain collision in which one person died.² Based on satellite images from 2019, it was concluded that over 1000 fields were set on fire in three of Srem's municipalities in a period of 10 days.³ In 2019, 14 people lost their lives due to fires from burning fields.⁴ These are just some of the many news related to the consequences of burning crop residues on agricultural land, which are repeated from year after year. These facts are very worrying and indicate the need to stop this practice. One of the approaches in solving this problem is the ban on burning plant residues and consistently applying these regulations in practice. This research is dedicated to the analysis of the relevant regulations in Serbia and in some EU member states in order to find answers to questions on how to regulate the ban on burning residues, whether the existing regulations are adequate, whether the cause of this situation is found in the legal regulations that need to be changed or whether there is a problem in the application of the regulations.

THE NEGATIVE CONSEQUENCES OF BURNING PLANT RESIDUES ON AGRICULTURAL LAND

Before analysing the legal regulations, it is necessary to consider what the consequences of burning plant residues on agricultural land are and why it is necessary to ban such activities. In addition to endangering the lives

¹ Ministry of Environmental Protection <https://www.ekologija.gov.rs/lat/projekti/ne-pali-strnjiku>

² Chain collision due to smoke, one person dead <https://www.politika.rs/sr/clanak/413578/Zbog-gustog-dima-lancani-sudar-na-autoputu> Also see: Fire near Leskovac, chain collision due to thick smoke https://rtv.rs/sr_lat/hronika/pozar-kod-leskovca-lancani-sudar-zbog-gustog-dima_955544.html

³ https://rtv.rs/sr_lat/vojvodina/srem/paljenje-njiva-od-sledece-godine-pratice-satelit_1064380.html

⁴ Ministry of Environmental Protection <https://www.ekologija.gov.rs/lat/saopstenja/vesti/ne-pali-strnjiku>

and health of people and property, which was discussed in the previously mentioned examples, the burning of crop residues negatively affects the agricultural land itself. The burning of plant residues disrupts the circulation of matter in the agroecosystem, soil degradation occurs, nutrients are destroyed, soil fertility is reduced, and beneficial insects and animals are destroyed.⁵ Due to burning, agricultural land becomes more susceptible to erosion, the ability to retain moisture is reduced, and due to the loss of organic matter, it is necessary to apply larger amounts of fertilizers.⁶ Experts point out that it is necessary for farmers to apply the exact opposite practice, i.e. to plough the harvest residues, because in that way, in addition to avoiding the previously mentioned harmful consequences, numerous positive effects are achieved. Ploughing plant residues increases the amount of organic matter in the soil, increases the activity of soil microflora, improves soil fertility, which increases the yield and quality of agricultural products, reduces the susceptibility to erosion, etc.⁷

Burning of plant residues causes other consequences. The process causes the emission of harmful gases that negatively affect the environment and contribute to climate change. It is estimated that in 2015, 3.3 % of total emissions of PM2.5 particles at the European Union level were caused by incineration of crop residues, and that the largest pollution came from Mediterranean and Eastern European countries.⁸ The ban on the burning of crop residues can be viewed in the context of the current trends of reducing climate change and

⁵ Jaćimović, G., Aćin, V., Crnobarac, J., Latković, D., Manojlović, M. (2017). Efekti zaoravanja žetvenih ostataka na prinos pšenice u dugotrajnom poljskom ogledu. *Letopis naučnih radova*, 41 (1), 1–2; Kastori, R., Maksimović, I., Putnik Delić, M. (2012). Environmental Aspects of Burning Field Residues for Use as an Alternative Fuel. *Ratarstvo i povrtarstvo*, 49 (3), 314; Sekulić, P., Ninkov, J., Hristov, N., Vasin, J., Šeremešić, S., Zeremski-Škorić, T. (2010). Sadržaj organske materije u zemljištima AP Vojvodine i mogućnost korišćenja žetvenih ostataka kao obnovljivog izvora energije. *Ratarstvo i povrtarstvo*, 47 (2), 592–593.

⁶ Pearson, P., Bodin, S., Gittelson, A., Kinney, S., McCarty, J., Stevenson, G., Albertengo, J. (2015). *Fire in the Fields: Moving Beyond the Damage of Open Agricultural Burning on Communities, Soil, and the Cryosphere A CCAC Project Summary Report: Impacts and Reduction of Open Burning in the Andes, Himalayas – and Globally*, International Cryosphere Climate Initiative, 1. Available at: <https://ccacoalition.org/en/resources/fire-fields-moving-beyond-damage-open-agricultural-burning-communities-soil-and-cryosphere>; Kastori, R., Maksimović, I., Putnik Delić, M. (2012). Environmental Aspects of Burning Field Residues for Use as an Alternative Fuel. *Ratarstvo i povrtarstvo*, 49 (3), 315. See: United Nations, Economic Commission for Europe Executive Body for the Convention on Long-range Transboundary Air Pollution, Draft guidance document on reduction of emissions from agricultural residue burning, Geneva, 6–8 December 2021, 7 Available at: https://unece.org/sites/default/files/2021-10/ECE_EB.AIR_2021_5-2113499E.pdf

⁷ Kastori, R., Maksimović, I., Putnik Delić, M. (2012). *Op. cit.*, 317; Jaćimović, G., Aćin, V., Crnobarac, J., Latković, D., Manojlović, M. (2017). *Op. cit.*, 2.

⁸ Amann, M., Gomez-Sanabria, A., Klimont, Z., Maas, R., Winiwarter, W. (2017). *Measures to address air pollution from agricultural sources*. International Institute for Ap-

adapting to changing climatic conditions. The Paris Agreement of 2015 set the goal of keeping the increase in average temperature globally below 2°C compared to the pre-industrial period.⁹ In order to achieve this goal, among other things, it is necessary to reduce greenhouse gas emissions. Agricultural production plays a significant role in this, since globally 20% of emissions come from agriculture,¹⁰ which includes the burning of plant residues. At the level of the European Union, the European Green Deal sets the goal of achieving climate neutrality by 2050, the goal of which is, among other things, to achieve zero net greenhouse gas emissions.¹¹

Having in mind all the previously mentioned negative consequences of burning plant residues on agricultural land and the set goals, we can conclude that the introduction of a ban on burning crop residues, precise regulation and the application of the regulations in practice are extremely important.

THE PROHIBITION ON THE BURNING OF CROP RESIDUES AT THE LEVEL OF THE EUROPEAN UNION AND IN CERTAIN MEMBER STATES

At the level of the European Union, the ban on the burning of crop residues is regulated within the framework of the Common Agricultural Policy, which is based on a two-pillar system. The first pillar covers market measures and direct payments, while the second one covers rural development policy.¹² Regulation no. 1306/2013 on the financing, management and supervision of the common agricultural policy,¹³ which regulates the ban on the burning of

plied Systems Analysis, 18. Available at: https://ec.europa.eu/environment/air/pdf/clean_air_outlook_agriculture_report.pdf

⁹ United Nations, Paris Agreement, 2015, Art. 2.

¹⁰ Ekaradt, F., Wieding, J., Garske, B., Stubenrauch, J. (2018). Agriculture-related Climate Policies – Law and Governance Issues on the European and Global Level. *Carbon & Climate Law Review* 4, 319.

¹¹ European Parliament resolution of 15 January 2020 on the European Green Deal (2019/2956(RSP)), OJ C 270, 7.7.2021. These goals are also set by the European Climate Act. See: Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), OJ L 243, 9.7.2021, Art. 2.

¹² Götz, V. (2012) Das Recht der Gemeinsamen Agrarpolitik – Kontinuität, Wandel, Systematik. In: Martinez, J. (Hrsg.), *Die Gemeinsame Agrarpolitik vor neuen Herausforderungen*, 50 Jahre Institut für Landwirtschaftsrecht. Baden-Baden: Nomos, 14.

¹³ Regulation (EU) No. 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricul-

organic residues on agricultural land, is part of the legal regulations belonging to the second pillar of the Common Agricultural Policy. In accordance with the provisions of this Regulation, Member States, within the cross-compliance system,¹⁴ which sets the standards that farmers, the users of direct payments, must meet, should, inter alia, ensure good agricultural and ecological condition of agricultural land. It is left to the states to set the minimum standards at national and regional levels that farmers need to meet in order to achieve this goal.¹⁵ When setting the minimum standards, Member States should take into account the specific characteristics of the area, climate conditions, land use, crop rotation, agricultural practices, the existing agricultural system and the structure of agricultural holdings, respecting the minimum standards set out in Annex II to Regulation no. 1306/2013.¹⁶ One of the standards for maintaining good agricultural and environmental condition of land provided for in Annex II is the maintenance of organic matter levels in the soil through the application of appropriate practices, including the prohibition of burning arable stubble, except when there are reasons related to plant health.¹⁷ The explanation of this minimum standard states that a general ban on the burning of crop residues in arable land may be prescribed, but member states are left with the option to prescribe additional, more detailed requirements.¹⁸

If farmers do not comply with the prescribed standards, which includes the ban on burning crop residues, an administrative penalty is envisaged, i.e., payments under the cross-compliance system can be reduced or abolished.¹⁹

There is a ban on burning crop residues in all EU member states.²⁰ However, in some parts of Europe, stubble burning is still common. The analysis

tural policy and repealing Council Regulations (EEC) No. 352/78, (EC) No. 165/94, (EC) No. 2799/98, (EC) No. 814/2000, (EC) No. 1290/2005 and (EC) No. 485/2008, OJ L 347, 20. 12. 2013.

¹⁴ For more details, see: Baldock, D. (2015). *Twisted Together: European Agriculture, Environment and the Common Agricultural Policy*. In: McMahon, J. A., Cardwell, M. N. (eds.), *Research Handbook on EU Agriculture Law*. Cheltenham: Edward Elgar Publishing, 141, 144; Danielsen, J. H. (2013). *EU Agricultural Law*. Alphen aan den Rijn: Kluwer Law International, 152–155.

¹⁵ Regulation No. 1306/2013, Art. 94.

¹⁶ Regulation No. 1306/2013, Art. 94.

¹⁷ Regulation No. 1306/2013, Annex II. McMahon, J. A. (2019). *EU Agricultural Law and Policy*. Cheltenham: Edward Elgar Publishing, 139.

¹⁸ Regulation No. 1306/2013, Annex II.

¹⁹ For more details, see: Regulation No. 1306/2013, Art. 99.

²⁰ Searle, S., Bitnere, K. (2017). *Review of the impact of crop residue management on soil organic carbon in Europe*. International Council on Clean Transportation, 2. Available at: https://theicct.org/sites/default/files/publications/EU-crop-residue-mgmt_ICCT-working-paper_15122017_vF.pdf

of satellite images in the period from 2003 to 2015 concluded that the burning of crop residues was widespread in Romania, Bulgaria, Croatia, Greece, Italy and Portugal, while in France, Denmark, Estonia and the United Kingdom there was a significant reduction in this practice.²¹ Countries where stubble burning is very rare are Germany, Austria, Belgium, the Netherlands, Slovakia, Finland, Sweden and Ireland.²² At the level of the European Union, the impact of the Common Agricultural Policy on biodiversity, land and water was evaluated, which included, among other things, the issue of farmers applying the prescribed standards. The document of the European Commission from December 17, 2021, concluded that all member states implement the measure of banning the burning of stubble, which is provided for in Standard 6 for the preservation of good agricultural and environmental condition of land, according to Regulation No. 1306/2013.²³ In this research, it was analysed how the ban on burning plant residues is regulated in EU member states where burning stubble is rare, so that we can draw conclusions about which models can be useful to Serbia on its way to abandon this practice. In addition, part of the research is dedicated to the legal regulations in Croatia as a former Yugoslav republic that has harmonized its regulations with the regulations of the European Union, which can also be useful for the process in which the Republic of Serbia is.²⁴

Austria

In Austria, the burning of crop residues is prohibited in accordance with the regulations related to the implementation of the measures of the Common Agricultural Policy of the European Union. The *Decree of the Federal Minister of Agriculture, Forestry, Environment and Water Management on horizontal rules for the Common Agricultural Policy* stipulates that one of the minimum standards for maintaining good agricultural and ecological conditions of land is the ban on burning straw on stubble, unless the competent authority grants

²¹ Amann, M., Gomez-Sanabria, A., Klimont, Z., Maas, R., Winiwarer, W. (2017). *Measures to address air pollution from agricultural sources*. International Institute for Applied Systems Analysis, 16. Available at: https://ec.europa.eu/environment/air/pdf/clean_air_outlook_agriculture_report.pdf

²² *Ibid.*

²³ Commission staff working document Evaluation impact of the CAP on biodiversity, soil and water (natural resources), SWD(2021) 425 final, Brussels, December 17, 2021, 14.

²⁴ One of the goals of the Strategy of Agriculture and Rural Development of the Republic of Serbia for the period 2014–2024 is the harmonization of domestic regulations with the regulations of the European Union.

an exception in an individual case due to phytosanitary reasons.²⁵ Thus, we can conclude that in Austria, the ban on burning crop residues is regulated in the same way as in Regulation no. 1306/2013 on the financing, management and monitoring of the common agricultural policy.

Incineration of plant residues is specifically regulated by the *Federal Law on Incineration of Materials Outside Incineration Facilities*²⁶ A ban is prescribed on the burning of biogenic materials outside the facilities intended for that purpose, which includes, among other things, unprocessed materials of plant origin (especially straw)²⁷ However, the possibility was left for the President of the Provincial Government to approve temporal and spatial exemptions from the ban on burning biogenic materials in certain cases, which may include “burning straw on stubble if necessary for growing winter grain or oilseed rape, provided that straw rot in the soil is not expected due to drought.”²⁸ This provision is in accordance with Regulation no. 1306/2013 which stipulates that the burning of arable stubble is prohibited.²⁹ The burning of crop residues on agricultural land in Austria is a misdemeanour punishable by a fine of 3,630 euros.³⁰

France

In France, the burning of crop residues is also prohibited in accordance with the regulations of the European Union. *The Rural and Maritime Fishing Code* stipulates that farmers applying for payments under the cross-compliance system established under the European Union’s Common Agricultural Policy must not burn straw residues, “nor the residues of oilseeds, protein and cereals.”³¹ However, the law leaves the possibility for the prefect to exceptionally, by the means of a reasoned decision, authorize farmers to carry out the

²⁵ Verordnung des Bundesministers für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft mit horizontalen Regeln für den Bereich der Gemeinsamen Agrarpolitik (Horizontale GAP-Verordnung), StF: BGBl. II Nr. 100/2015, Anlage 2 zu para. 25 Abs. 1.

²⁶ Bundesgesetz über das Verbrennen von Materialien außerhalb von Anlagen (Bundesluftreinhaltegesetz – BLRG), BGBl. I Nr. 137/2002, zuletzt geändert BGBl. I Nr. 58/2017.

²⁷ Bundesgesetz über das Verbrennen von Materialien außerhalb von Anlagen, para. 1a, para. 3 (1).

²⁸ Bundesgesetz über das Verbrennen von Materialien außerhalb von Anlagen, para. 3 (4).

²⁹ Regulation No 1306/2013, Annex II.

³⁰ Bundesgesetz über das Verbrennen von Materialien außerhalb von Anlagen, para. 8.

³¹ Code rural et de la pêche maritime, Art. D615-47.

burning for phytosanitary reasons.³² The above provisions are fully in line with Regulation no. 1306/2013. The above provisions are fully in line with Regulation no. 1306/2013.

The burning of crop residues on agricultural land is not specifically regulated by other regulations. However, it should be mentioned that significant attention is paid to the burning of the so-called green waste from gardens and parks. In accordance with the *Environment Code*, it is forbidden to burn bio waste from gardens and parks in the open.³³ However, it is envisaged that in exceptional cases and “solely for the purpose of eradicating epiphytes or eliminating invasive plant species, individual exemptions may be issued by a state representative” under the conditions specified in a special regulation.³⁴ Since plant residues after harvest are also bio-waste, these provisions can be applied to these cases in a broader sense. Failure to comply with waste management rules in accordance with the Environment Code, which includes the burning of plant residues without a special permit, is punishable by two years in prison and a fine of 75,000 euros.³⁵

Germany

In Germany, the ban on burning crop residues on agricultural land is prescribed by the *Regulation on the fulfilment of basic requirements and standards within the EU regulations on agricultural payments*. In accordance with Article 7, which refers to the preservation of the share of organic matter in the soil, stubble may not be burned.³⁶ In addition to this general ban on the burning of crop residues on agricultural land, there are special regulations at the level of provinces that specify when it is possible to allow the burning of crop residues, but these rules mostly apply to crop production in gardens. One example is the Ordinance by the State Government of Saxony on the disposal of waste of plants. If it is not possible to dispose of plant waste from non-commercial garden plots in the manner prescribed by the ordinance, burning is allowed in accordance with the following rules: the burning of plant residues

³² Code rural et de la pêche maritime, Art. D615-47.

³³ Code de l'environnement, Art. L541-21-1.

³⁴ *Ibid.*

³⁵ Code de l'environnement, Art. L541-46.

³⁶ Verordnung über die Einhaltung von Grundanforderungen und Standards im Rahmen unionsrechtlicher Vorschriften über Agrarzahllungen (Agrarzahllungen-Verpflichtungenverordnung), vom 17. Dezember 2014 (BAnz AT 23.12.2014 V1), zuletzt geändert 17. 9. 2021, I 4302, para. 7.

“...must not cause any danger or disturbance to the general public or neighbourhood, which especially refers to smoke or flying sparks. No other material, in particular household waste, mineral oil products or coated wood or wood treated with protective agents, may be used to light or make fire stronger.”³⁷

The period in which burning is allowed has also been determined, and it is the period from April 1 to April 30 and from October 1 to October 30 on work days between 8:00 and 18:00, for a maximum of two hours a day. In addition, it is necessary to respect the minimum distance of 1.5 kilometres from the airport,

“...200m from the highway, 100m from federal, rural and county roads, shops with flammable liquids or compressed gases and companies that produce, process or store explosives or flammable substances.”³⁸

In Bavaria, the *Ordinance on the disposal of plant waste outside authorized landfills*, in addition to plant waste from gardens, also regulates burning agricultural waste / residues similar to straw. One of the conditions is that the plant remains cannot rot enough in the soil and that this can negatively affect the soil. Farmers cannot make such a decision on their own, but the District Administrative Body publishes in the official gazette a list of areas in which the above conditions have been met.³⁹ In other areas, a person who intends to burn plant residues must submit a report to the municipality at least seven days prior to doing it, after which the district administration body is notified and it can make a decision to ban it if the prescribed conditions are not met.⁴⁰ The ordinance stipulates that burning can be done only on working days from 6:00 to 18:00, while potential danger caused by smoke and the spread of fire must be prevented, while respecting the prescribed distance from residential and other buildings, roads and forests.⁴¹ The fire must be constantly monitored and the fire must be extinguished before it gets dark. In order to protect the soil, fauna and flora, it must be ensured that large areas are not burned at the same time, that the fire covers the surface of the land for as short as possible, without excessive combustion.⁴² Burning plant residues contrary to the regulations

³⁷ Verordnung der Sächsischen Staatsregierung über die Entsorgung von pflanzlichen Abfällen (Pflanzenabfallverordnung – PflanzAbfV) vom 25. September 1994, (SächsGVBl. S. 1577), para. 4 (2) 1–2.

³⁸ Pflanzenabfallverordnung, para. 4 (2) 3.

³⁹ Verordnung über die Beseitigung von pflanzlichen Abfällen außerhalb zugelassener Beseitigungsanlagen (Bayerische Pflanzenabfall-Verordnung – PflAbfV) in der Fassung der Bekanntmachung vom 13. März 1984 (GVBl. S. 100), zuletzt geändert 23. Mai 2017 (GVBl. S. 184), para. 2 (2).

⁴⁰ Bayerische Pflanzenabfall-Verordnung, para. 2 (2).

⁴¹ Bayerische Pflanzenabfall-Verordnung, para. 2 (4).

⁴² *Ibid.*

is a misdemeanour for which a fine of up to 100,000 euros is envisaged in accordance with the ordinance and the Law to promote the circular economy and ensure environmentally friendly waste management.⁴³

Croatia

The burning of crop residues is also prohibited in Croatia, in accordance with the regulations of the European Union. According to the Regulation on Multiple Compliance, and in accordance with the Regulation of the European Union no. 1306/2013, support beneficiaries have the obligation to maintain agricultural land in good agricultural and ecological condition, which, among other things, means a ban on burning crop residues from agricultural land.⁴⁴ An exception to this rule is also envisaged, i.e.

“...burning harvest residues is allowed only for the purpose of preventing the spread or suppressing organisms harmful to plants, for which there is an official order.”⁴⁵

There is almost the same provision in the Regulation on agro-technical measures regarding the ban on burning crop residues, i.e.,

“crop residues must not be burned, and burning them is allowed only in order to prevent the spread or suppress organisms harmful to plants with the implementation of fire protection measures in accordance with special regulations.”⁴⁶

The issue of burning crop residues is also regulated by decisions on agro-technical measures and fire protection measures adopted at the municipal level. In all decisions, the ban on burning stubble is regulated in the same way as it was done in the previously mentioned regulations, but some decisions also contain more detailed provisions on exceptions to this ban. These special rules at the local level apply to the burning of weeds and plant waste with the special approval of the fire brigade regarding the place and time of the burning

⁴³ Verordnung über die Beseitigung von pflanzlichen Abfällen außerhalb zugelassener Beseitigungsanlagen, § 5. Gesetz zur Förderung der Kreislaufwirtschaft und Sicherung der umweltverträglichen Bewirtschaftung von Abfällen (Kreislaufwirtschaftsgesetz – KrWG) vom 24. Februar 2012 (BGBl. I S. 212), zuletzt geändert 10. August 2021 (BGBl. I S. 3436), para. 69.

⁴⁴ In accordance with the Regulation on Multiple Compliance “Residues made by pruning permanent crops are not considered to be harvest residues.” Regulation on multiple compliance, *Official Gazette*, no. 113/2019, Annex II.

⁴⁵ Regulation on multiple compliance, *Official Gazette*, no. 113/2019, Annex II.

⁴⁶ Regulation on agro-technical measures, *Official Gazette*, no. 22/2019, Art. 9 (2).

and in compliance with the prescribed conditions.⁴⁷ In some municipalities, it is prescribed that if the burning is carried out on larger areas, fire-fighters with equipment must be present.⁴⁸ Some of the conditions are that the burning must be done at a “reasonable distance,” i.e., at a distance of 200m, from the forest land, at a distance of at least 30m from residential buildings,⁴⁹ at a reasonable distance from neighbouring plots, transmission lines.⁵⁰ The land on which the burning takes place must be cleaned of grass and flammable materials. It is necessary to mark the persons who light the fire and they must have the basic means and equipment for extinguishing the fire, and after the burning they are obliged to inspect the place, extinguish the fire completely and only after that they are allowed to leave the place of burning.⁵¹ In some municipalities, a general ban on burning weeds and plant waste on agricultural land during the harvest and ripening season of agricultural crops is prescribed,⁵² while in some decisions the period is specified – from June 1 to September 30.⁵³ In some municipalities, there are additional restrictions, such as a ban on burning during the night between 7 pm and 5 am, as well as during strong winds.⁵⁴ Failure to comply with these rules is a misdemeanour, and the amount of fines envisaged varies greatly between municipalities. Depending on the municipality, a fine of 500 to 10,000 kuna is envisaged for a legal entity, 100 to 2,500 kuna for a responsible person within a legal entity and an entrepreneur, and 100 to 1,000 kuna for a natural person.⁵⁵ If the burning of crop residues causes a fire, the

⁴⁷ Decision on agro-technical measures and measures for arranging and maintaining agricultural ores and fire protection measures in the area of the Municipality of Tovarnik, May 23, 2020, Art. 22.

⁴⁸ Decision on agro-technical measures and measures for regulation and maintenance of agricultural ores in the Municipality of Lipovljani, May 28, 2018, Art. 11.

⁴⁹ *Ibid.*

⁵⁰ Decision on agro-technical measures and measures for arranging and maintaining agricultural ores and fire protection measures in the area of the Municipality of Tovarnik, Art. 22.

⁵¹ *Ibid.*; Decision on agro-technical measures and measures for the arrangement and maintenance of ores and fire protection measures on agricultural land in the Municipality of Gola, July 31, 2019, Art. 20.

⁵² *Ibid.*

⁵³ Decision on agro-technical measures and measures for arranging and maintaining agricultural ores and fire protection measures in the area of the Municipality of Tovarnik, Art. 23.

⁵⁴ Decision on agro-technical measures and measures for arrangement and maintenance of ores and fire protection measures on agricultural land in the Municipality of Gola, Art. 21.

⁵⁵ Compare: Decision on agro-technical measures and measures for arrangement and maintenance of ores and fire protection measures on agricultural land in the Municipality of Tovarnik, Arts. 25–26; Decision on agro-technical measures and measures for arrangement

provisions of the Law on Fire Protection also apply, which stipulate that every natural and legal person is responsible for “failure to implement fire protection measures, causing fires, as well as for the consequences thereof.”⁵⁶ The fine for a misdemeanour of a natural person in case of causing a fire is in the amount of 15,000 to 150,000 kunas or imprisonment for up to 60 days.⁵⁷

Ban on the burning of crop residues on agricultural land in the Member States of the European Union – conclusions

From the previous analysis of legal regulations in the Member States of the European Union, we can conclude that in regulating the ban on burning crop residues, all countries rely on the Common Agricultural Policy of the European Union. The provisions of Regulation no. 1306/2013 on the financing, management and supervision of the common agricultural policy related to the ban on burning arable stubble, except when there are reasons related to plant health⁵⁸ are transferred to the regulations of the Member States in almost the same form.⁵⁹ In each of the countries whose regulations we have analysed, there are exceptions to the ban on the burning, and they are specifically regulated in Austria, Germany and Croatia. Burning plant residues in exceptional cases is very precisely regulated in Germany and Croatia. Therefore, despite the general ban in the member states of the European Union, there is a dose of flexibility, which is lacking in Serbia and which will be discussed in more detail in the following sections. In all countries, fines are provided for burning plant residues contrary to the ban.

Given that the Member States have the same starting point in the form of Regulation no. 1306/2013 on the financing, management and supervision of the common agricultural policy,⁶⁰ it can be concluded that the differences in the

and maintenance of ores and fire protection measures on agricultural land in the area of the Municipality of Gola, Art. 23; Decision on agro-technical measures and measures for arranging and maintaining agricultural ores in the area of the Municipality of Lipovljani, Art. 16.

⁵⁶ Law on Fire Protection, *Official Gazette*, no. 92/2010, Art. 8 (3).

⁵⁷ Law on Fire Protection, Art. 61.

⁵⁸ Regulation No 1306/2013, Annex II.

⁵⁹ *Ibid.*

⁶⁰ As was previously mentioned, the European Commission concluded in a document dated 17 December 2021 that all Member States have provisions on the prohibition of stubble burning provided for in Standard 6 for the preservation of good agricultural and environmental condition of land under Regulation no. 1306/2013 and to implement it. (Commission staff working document Evaluation impact of the CAP on biodiversity, soil and water (natural resources), SWD(2021) 425 final, Brussels, December 17, 2021, p. 14). However, satellite imagery indicates that this ban has not been fully implemented in

occurrence of fire and the prevalence of the practice of burning crop residues, which was discussed at the beginning of this part, occur due to differences in applying the regulations. Given that the system of cross-compliance is applied in all Member States and that the sanction imposed on farmers for non-compliance with the standards is reducing or abolishing payments to them, the number of cases in which this sanction was applied due to the burning of crop residues may be one of the indicators of control over the application of regulations and inspection work. At the same time, this may be indicative of the frequency of these problems in individual Member States. Based on these data, it would be possible to answer the question of what contribution this measure has in practice, i.e., how much it affects the prevention of the practice of burning crop residues. However, there is no such data at the level of the European Union.

THE BAN ON THE BURNING OF HARVEST RESIDUES IN SERBIA

In Serbia, the ban on burning crop residues is regulated within several regulations. In accordance with the basic law which regulates issues related to the use and protection of agricultural land, the *Law on Agricultural Land*, it is prohibited to cause field damage, which includes the prohibition of

“...damage leading to reduced productivity, structure and layers of agricultural land, and any other damage to agricultural land.”⁶¹

Having in mind the previously analysed negative consequences of burning crop residues and land degradation due to such activities, we can conclude that burning stubble is a form of field damage. In addition to this general provision on field damage, the Law on Agricultural Land specifically prohibits burning organic residues after harvest. Prescribing specific measures for protection against burning of crop residues on agricultural land and for protection against field damage is the responsibility of local self-government units.⁶² Burning organic residues on agricultural land after harvesting crops and causing field damage is a misdemeanour. Fines that are envisaged are in the amount of 100,000 to 1,000,000 dinars for a company, enterprise or other legal

all Member States in previous years. Amann, M., Gomez-Sanabria, A., Klimont, Z., Maas, R., Winiwarter, W. (2017). *Measures to address air pollution from agricultural sources*. International Institute for Applied Systems Analysis, 16. Available at: https://ec.europa.eu/environment/air/pdf/clean_air_outlook_agriculture_report.pdf

⁶¹ Law on Agricultural Land, *Official Gazette of the RS*, no. 62/2006, 65/2008 – state law, 41/2009, 112/2015, 80/2017 and 95/2018 – state law, Art. 28.

⁶² Law on Agricultural Land, Art. 28.

entity, from 5,000 to 50,000 dinars for a responsible person within a company, enterprise or other legal entity, and a fine in the amount of 25,000 to 250,000 dinars is envisaged for an entrepreneur. In the case of a natural person who is the owner or user of agricultural land, the fine ranges from 5,000 to 50,000 dinars.⁶³ The manner of use and protection of agricultural land in accordance with the Law on Agricultural Land is controlled by the competent agricultural inspection.

One of the units of local self-government in which the application of measures for the protection of agricultural land and control over the implementation of these measures is regulated in detail is the municipality of Žabalj. *The decision on measures for the protection of agricultural land and the organization of the field guard service in the municipality of Žabalj* contains a provision prohibiting the burning of organic residues after harvest, in accordance with the Law on Agricultural Land.⁶⁴ It has been determined that the field guard service performs the tasks of providing organized protection against the burning of organic residues on agricultural land and protection against field damage. The field guard, among other things, should prevent the burning of crop residues after harvest.⁶⁵ The decision also precisely defines the duties of a field guard when detecting field damage, such as making a report, photographing agricultural land on which damage was caused and submitting a report with evidence to the head of the field guard service, who then delivers the report to the owner or user of the agricultural land on which the damage occurred and to an agricultural inspector, in order to take further measures in accordance with the Law on Agricultural Land.⁶⁶ In the event that the field guard has not determined that field damage has been caused to the agricultural land, the owner or user of the agricultural land should report the damage to the field guard service.⁶⁷ If the perpetrator of the illegal act is known, the duty of the head of the field guard service is to initiate misdemeanour proceedings against that person.⁶⁸ It can be concluded that the duties of field guards are precisely regulated and that by respecting and implementing the *Decision on measures to protect agricultural land and organizing the field guard service in the Municipality of Žabalj*, the burning of crop residues should be prevented in practice.

⁶³ Law on Agricultural Land, Art. 85

⁶⁴ Decision on measures for the protection of agricultural land and the organization of the field guard service in the municipality of Žabalj, *Official Gazette of the Municipality of Žabalj*, no. 18/2018, Art. 4.

⁶⁵ *Ibid.*, Art. 6.

⁶⁶ *Ibid.*, Art. 12, 14.

⁶⁷ *Ibid.*, Art. 13.

⁶⁸ *Ibid.*, Art. 14.

One of the sanctions for people who burn harvest residues on agricultural land, which should affect the prevention of this practice among farmers, is determined by the *Regulation on entry in the register of agricultural holdings and renewal of registration, as well as on conditions for the status of passive agricultural holdings*. It is prescribed that an agricultural holding passes into a passive status in case of non-compliance with the regulations, and among the precisely listed reasons is the burning of organic residues after the harvest of crops.⁶⁹ This type of sanction is very important because agricultural holdings that are in a passive status cannot receive incentive measures for the development of agricultural production, and the request of such an agricultural holding for the use of incentives will be rejected without consideration. In addition, the land fund of an agricultural holding in passive status cannot be used for the entry of another agricultural holding in the register.⁷⁰ The Regulation stipulates that if the decision on the passive status of an agricultural holding is made due to the burning of crop residues, the holding will remain in a passive status for a period of three years. After the expiration of one and a half years, the agricultural holding may submit a request for temporary termination of passive status, stating justified reasons for regaining its active status, and a proposal for a decision on that is made by the Commission for Assessing Passive Status. The regulation does not specify what exactly justified reasons for termination of passive status are, but it states that the commission should take into account all the circumstances of the case, especially whether the reasons for the original decision on passive status caused damage and whether it was removed by the holding.⁷¹ If we take into account the previous definition of field damage, it can be concluded that burning crop residues degrades and reduces the fertility of agricultural land, but it is also important to consider the way the holding later treated the land and what was done to contribute to improving soil fertility.

The previously analysed provisions of the Regulation on entry in the register of agricultural holdings and renewal of registration, as well as on conditions for the status of passive agricultural holdings can be compared with Regulation no. 1306/2013 on the financing, management and monitoring of the common agricultural policy, given that the regulation provides for a sanction

⁶⁹ Regulation on entry in the register of agricultural holdings and renewal of registration, as well as on conditions for the status of passive agricultural holdings, *Official Gazette of the RS*, no. 17/2013, 102/2015, 6/2016, 46/2017, 44/2018 – state law, 102/2018 and 6/2019, Art. 15.

⁷⁰ Regulation on entry in the register of agricultural holdings and renewal of registration, as well as on conditions for the status of passive agricultural holdings, Art. 15.

⁷¹ Regulation on entry in the register of agricultural holdings and renewal of registration, as well as on conditions for the status of passive agricultural holdings, Art. 17.

for burning crop residues in the form of disabling a perpetrator to compete for incentive measures, which is similar to the sanction provided under the cross-compliance system, but the measure in Serbia is stricter, since the possibility of reducing incentives does not exist, and it is not possible to get them at all in case of the sanction being applied. In Serbia, the harmonization of domestic regulations with the regulations within the Common Agricultural Policy has begun, as envisaged by the Strategy of Agriculture and Rural Development of the Republic of Serbia for the period from 2014 to 2024.⁷² However, a system of cross-compliance has not been established as in the European Union, but part of the principles on which it is based is contained in the Law on Agriculture and Rural Development⁷³ and the Law on Incentives in Agriculture and Rural Development. In accordance with the provisions of the Law on Incentives in Agriculture and Rural Development, the beneficiary is obliged, inter alia, to comply with

“...regulations governing environmental quality standards, public health, animal and plant health, animal welfare and agricultural land.”⁷⁴

However, this rule is not further specified in the law as it was done in Regulation no. 1306/2013 where, in order to preserve the good agricultural and ecological condition of the land, a ban on burning arable land was imposed. In addition, the Law on Incentives in Agriculture and Rural Development does not provide for reduction or abolition of incentives in case the beneficiary does not comply with the rules, but the sanction for non-compliance is provided by previously analysed provisions of the *Regulation on entry in the register of agricultural holdings and renewal of registration, as well as on conditions for the status of passive agricultural holdings*.

In addition to the previously analysed regulations in the field of agriculture, the ban on burning crop residues in Serbia is directly or indirectly regulated by other regulations. In accordance with the Law on Fire Protection, it is forbidden to burn stubble residues and plant waste. If a person, contrary to the ban, incinerates and thus causes a fire, he is obliged to reimburse the costs incurred to the fire and rescue unit in this particular case.⁷⁵ In addition, burning the stubble residues and plant waste in the open space is a misdemeanour, and

⁷² Strategy of Agriculture and Rural Development of the Republic of Serbia for the period 2014–2024, *Official Gazette of the RS*, no. 85/2014.

⁷³ See: Law on Agriculture and Rural Development, *Official Gazette of the RS*, no. 41/2009, 10/2013 – state law, 101/2016, 67/2021 – state law and 114/2021, Art. 18.

⁷⁴ Law on Incentives in Agriculture and Rural Development, *Official Gazette of the RS*, no. 10/2013, 142/2014, 103/2015 and 101/2016, Art. 10.

⁷⁵ Law on Fire Protection, *Official Gazette of the RS*, no. 111/2009, 20/2015, 87/2018 and 87/2018 – state laws, Art. 50.

the fine for a natural person is in the amount of 10,000 dinars.⁷⁶ The law specifically regulates the duties of farmers during the harvesting works in order to protect stubble from fire. In particular, it is prescribed that “a company, agricultural cooperative, institution or other legal entity, entrepreneur and farmer” should take special measures to protect stubble from fire, which means

“...organizing non-stop overseeing; organizing an observation service; organizing a communication and information service; equipping machinery with appropriate firefighting equipment; controlling the fire-fighting equipment; controlling the mechanization in terms of it functioning properly; controlling the crop storage.”⁷⁷

It is also prescribed that the Minister of Agriculture should pass a “regulation which regulates in more detail the measures of fire protection in agriculture.”⁷⁸ The deadline for the adoption of bylaws, including this regulation, was six months from the day the law came into force, but such a regulation has not been adopted yet. During the research, a conclusion was reached that local self-government units rely on the *Rulebook on special measures for fire protection in agriculture* from 1984⁷⁹ when adopting the annual plan (program) of fire protection for small crops, as is the case, for example, in the municipalities of Žabalj and Žitište.⁸⁰ However, the rulebook was adopted on the basis of the Fire Protection Act of 1982, which is no longer in force, and certain provisions of the rulebook are not in accordance with the applicable regulations. For example, the *Rulebook on special measures for fire protection in agriculture* states that

“...stubble or straw can be burned in the field if the presence and supervision to prevent fires is previously provided. The territorial fire brigade shall be notified of the burning of stubble or straw in a timely manner, and no later than 24 hours before the burning.”⁸¹

This provision is completely contrary to the applicable regulations and the ban on burning crop residues. These facts indicate the need for the urgent adoption of a new rulebook that would regulate fire protection measures in agriculture

⁷⁶ Law on Fire Protection, Art. 84.

⁷⁷ *Ibid.*, Art. 49.

⁷⁸ *Ibid.*

⁷⁹ Rulebook on special fire protection measures in agriculture, *Official Gazette of the SRS*, no. 27/1984.

⁸⁰ See: *Plan for protection of small grains from fire for 2021*, *Official Gazette of the Municipality of Žabalj*, no. 19/2021; *Program for protection of small crops from fire in the municipality of Žitište for 2020*.

⁸¹ Rulebook on special fire protection measures in agriculture, *Official Gazette of the SRS*, no. 27/1984, Art. 4.

in accordance with current legislation so that local governments can adopt their protection plans and programs in accordance with it.

One of the measures envisaged by the plans (programs) of local self-government units for the protection of small crops from fire is informing citizens about the ban on burning crop residues and lighting fires in the open. This needs to be done through the media and by posting notices at public gathering places.⁸² In addition to activities at the local level, it should be noted that the Ministry of Environmental Protection has launched a campaign “Don’t burn the stubble!” in order to raise public awareness of the dangers and harms of this practice.

From the analysis of annual plans for protection of small grains from fire, we can conclude that municipal councils adopt the same plans from year to year, sometimes without even changing the total number of areas sown with different agricultural crops.⁸³ The question may be asked whether the adoption of fire protection plans and programs is just a formality or it is an actual way to prevent fires and the practice of burning crop residues. Having in mind the large number of fires that occur every year during the harvest period, which was discussed at the beginning of this paper, we can conclude that it is necessary to change existing practices and adjust plans and programs to the real situation, i.e., change actions to prevent burning and the occurrence of a fire. Adopting almost identical plans at the level of local self-government units from year to year does not lead to a solution to the problems that municipalities and citizens face every year.

In the context of causing fires by burning harvest residues, it is necessary to mention the provisions of the Criminal Code. Namely, in the case of burning the stubble, the perpetrators can be held responsible for the offense of causing general danger. The Criminal Code stipulates that

“...whoever, by fire (...) or any other generally dangerous act or means endangers the life or body of a person or larger property, shall be punished by imprisonment for a term between six months and five years and by a fine.”⁸⁴

⁸² Examples of places where notices prohibiting the burning should be posted are “local hospitals, markets, larger stores, post office, local communities.” *Plan for protection of small grains from fire for 2021*, Official Gazette of the Municipality of Žabalj, no. 19/2021, 4.

⁸³ The conclusion about the same areas sown with the same agricultural crops was reached by analysing and comparing the plans for protection of small grains from fire in the Municipality of Žabalj in the period from 2018 to 2021. Specifically, the plans estimate that for a period of four years, about 6,200 ha of wheat and 720 ha of barley have been sown in the municipality every year. See. p. 2 of the Plans for protection of small grains from fire in the Municipality of Žabalj.

⁸⁴ Criminal Code, *Official Gazette of the RS*, no. 85/2005, 88/2005 - amended, 107/2005 – amended, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and

If the offense of causing general danger was committed out of negligence, the possible sentence of imprisonment is up to three years.⁸⁵ When this act results in

“...severe physical injury or large-scale property damage, the perpetrator shall be punished by imprisonment for one to eight years,”

and if

“...death of one or more persons occurs, the perpetrator shall be punished by imprisonment for two to twelve years.”⁸⁶

CONCLUSION

Based on the results of the research, we can conclude that in the member states of the European Union, the ban on the burning of crop residues is primarily regulated within the measures of the Common Agricultural Policy. The possibility of deviating from this prohibition in exceptional cases has been left open, which is a kind of flexibility that does not exist in the regulations of the Republic of Serbia. There are differences among the member states of the European Union regarding the level of precision in regulating this issue, but nevertheless, in most countries, especially the old member states, the rules prohibiting the burning of crop residues are respected.

From the previous analysis, we can conclude that in Serbia, burning crop residues is regulated in a very strict way, especially in comparison with European Union regulations. Burning the residues is completely prohibited without providing the option for it to be carried out in special cases as it is done in the member states of the European Union. The ban on burning crop residues is regulated not only by regulations in the field of agriculture, but also by other laws, which speaks in favour of the fact that this is a very significant, decades-old problem that goes beyond agriculture. Misdemeanour liability and fines are in line with the rules that exist in the member states of the European Union. Local self-government units have been given a significant role, especially when it comes to making decisions on agricultural land protection measures and organizing a field guard service and fire protection programs for small crops, which is also in line with the practice in some EU countries. It can be concluded that the ban on burning crop residues in Serbia is regulated

35/2019, Art. 278, para. 1.

⁸⁵ Criminal Code, Art. 278, para. 5.

⁸⁶ Criminal Code, Art. 288.

in a good way, but it is necessary to pass bylaws that were discussed in the previous section. The application of the existing regulations should prevent the practice of burning crop residues and the occurrence of harmful consequences that were discussed at the beginning of this paper. However, the registered number of fires caused by burning stubble every year point to the opposite. I am of the opinion that the problem is not in the regulations, but that their adequate application in practice is missing. During the research, I tried to determine the situation in case law, but came to the conclusion that there are not many verdicts regarding the burning of crop residues. This can also be one of the indicators of the lack of application of the regulations, i.e., punishing the perpetrators. It is necessary to change the situation in practice and ensure the application of the regulations, in which inspection services have a significant role. In addition, it should be kept in mind that persons who burn plant residues are not always the owners or users of agricultural land. There are a significant number of cases in which people burn harvest residues on someone else's land in order to more easily collect corn cobs from agricultural land.

In addition to the implementation of regulations, it is necessary to work on raising the awareness of citizens about the negative consequences of burning harvest residues. Because of that, in recent years, more and more campaigns have been conducted in which the negative consequences of burning crop residues are highlighted, in order to dissuade citizens from applying such practices. Changing people's view and making them understand that such activities are very harmful is extremely important, keeping in mind that this is a decades-long practice that has been passed down from generation to generation, creating a kind of tradition. In addition, it is necessary to remember that some farmers point to financial reasons as to why they apply this practice. The price of fuel and the lack of adequate mechanization lead to some farmers making the solution to the problem of cleaning the field for the upcoming sowing easier by burning the crop residues, which indicates the need to help farmers in this area. In some cases, farmers try to deal with pests and pathogens by burning stubble. Such exceptions to the ban on incineration are not specifically regulated in the analysed domestic regulations and in this area there is room for improving domestic regulations in line with European standards.

Finally, it should be added that the problem of burning crop residues in Serbia is the focus of research by experts in the field of agriculture. However, the application of measures that contribute to preserving the fertility of land and preventing the negative consequences of certain activities such as burning crop residues depends on regulations in this area and sanctions in case of non-compliance, which indicates the important role of lawyers. The information encountered during the research speaks about the interest of the legal profession in this issue. Namely, analysing the existing literature in this field, I

concluded that in Serbia, there are no professional and scientific papers written by lawyers related to this topic.

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