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CRIMINAL LAW PROTECTION OF ANIMALS IN LIGHT OF EU DIRECTIVE 2024/1203**

ABSTRACT: This paper examines the alignment of the Republic of Serbia's criminal legislation with EU Environmental Crime Directive 2024/1203. Although the Directive does not specifically address animal protection, several criminal offenses EU member states are required to enforce directly involve the protection of wild animal species. Member states are thus required to impose strict penalties for actions such as killing, destroying, possessing, buying, selling, offering for sale, importing, exporting, or unlawfully trading these species or their derivatives. In the Criminal Code of the Republic of Serbia, these actions can be classified under various criminal offenses and misdemeanors, often aimed at primarily safeguarding the economy, market, customs system, and similar interests rather than nature itself. Based on the premise that the current legal framework is insufficient to provide animals with adequate protection, the paper analyzes existing criminal provisions related to animal protection and assesses their alignment with the Directive. The paper also addresses several controversial theoretical questions, such as whether animals can even be recognized as subjects of criminal law protection, whether they can be granted legal personhood, and whether it is appropriate to classify

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them as movable property or “goods” in the eyes of the law. Finally, it examines the problematic relationship between criminal offenses and misdemeanors in this area, where overlapping legal definitions pose a risk that initiating misdemeanor proceedings and imposing misdemeanor penalties could, in fact, shield offenders from criminal liability.

Keywords: wildlife crimes, EU Directive 2024/1203, legal personhood, criminal offenses, misdemeanors

INTRODUCTION

Directive 2024/1203 on environmental crime (hereinafter: the Directive) was adopted on March 26, 2024, and EU member states are obligated to implement it into their national legislation by May 21, 2026, respectively. With the exception of mandating the introduction of several specific offenses, the Directive does not primarily focus on wildlife protection. However, many of the environmental crimes it defines naturally and inevitably impact flora and fauna. For instance, the release, emission, or introduction of harmful substances, energy, or radiation into the air, soil, or water directly affects the animals and plants inhabiting the ecosystems they support. It is clear that environmental pollution and other environmental offenses affect not only humans but all living organisms in the affected area, including plant and animal life. Therefore, one could argue that criminalizing such offenses does not only protect humans and their right to a healthy environment but also safeguards other living beings. The leading cause of the extinction of certain species lies in habitat destruction, which results from deforestation, the conversion of steppes into farmland, the draining of wetlands, and similar activities. Accordingly, the Criminal Code of the Republic of Serbia (CC)¹ stipulates that certain environmental crimes are considered more severe if they result in large-scale destruction of animal or plant life.²

Crimes against wild animal and plant species (wildlife crime) are a highly lucrative business for organized criminal groups. Some estimates suggest that the price of rhino horn per kilogram is twice that of gold!³ Such

¹ Criminal Code, *Official Gazette of RS*, Nos. 85/2005, 88/2005 – amd., 107/2005 – amd., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, and 35/2019.

² These offenses include environmental pollution (Article 260 of the Criminal Code), illegal construction and operation of facilities and installations polluting the environment (Article 262), damaging environmental protection facilities and installations (Article 263), bringing hazardous substances into Serbia, and unlawful processing, depositing and stockpiling of hazardous substances (Article 266).

³ U4 Exper Answer, *Wildlife crime and corruption*. Available at: <https://www.u4.no/publications/wildlife-crime-and-corruption.pdf>

crimes include but are not limited to, killing and abusing animals, illegal hunting and fishing, unlawful trade, smuggling, and trafficking of wildlife and their derivatives.⁴ Wild animals are sold to circuses or individuals who keep them as status symbols or exotic pets, while their derivatives are primarily used in the fashion and food industries, as well as in alternative and traditional medicine and pharmaceuticals.⁵ Hunting methods include traps and steel snares that cause severe suffering and slow, agonizing deaths to the animals, and those that manage to survive are kept in utterly inhumane conditions. A striking example is the case of a lion cub found in critical condition near the city of Subotica,⁶ supporting the claim that wildlife crime is prevalent in Serbia but often goes unnoticed, slipping “under the radar. “Besides being extremely inhumane and cruel to animals, who are sentient and sensitive beings, such crimes also pose an indirect but serious threat to humans, as well. The illegal importation of these animals into other countries and their resulting confinement in inhumane and unnatural conditions are sources of numerous diseases, including zoonotic diseases (also known as zoonoses), which are estimated to cause 60 % of infectious diseases in humans.⁷ Trading wildlife illegally also carries the risk of introducing invasive species, with estimates suggesting that around 16 % of species can become biologically invasive when introduced into a new environment.⁸ These crimes are often committed against endangered animal species, whose extinction disrupts ecosystems and depletes natural resources.

⁴ South, N., & Wyatt, T. (2011). Comparing illicit trades in wildlife and drugs: An exploratory study. *Deviant Behavior*, 32(6), 538–561. Available at: <https://www.tandfonline.com/doi/abs/10.1080/01639625.2010.483162>

⁵ Van Uhm, D. P. (2018). The social construction of the value of wildlife: A green cultural criminological perspective. *Theoretical Criminology*, 22(3), 384–401. Available at: <https://doi.org/10.1177/1362480618787170>. Van Uhm, D. P. & Moreto, W. D. (2018). Corruption Within the Illegal Wildlife Trade: A Symbiotic and Antithetical Enterprise. *British Journal of Criminology*, 58(4), 864–885. Available at: <https://doi.org/10.1093/bjc/azx032>,

⁶ ORCA, *Tužna sudbina lavice Kiki: lekcija svima nama* (Eng.: *ORCA, The Sad Fate of Kiki the Lioness: A Lesson for Us All*). Available at: <https://orca.rs/tuzna-sudbina-lavice-kiki/>

⁷ Jones, K. E., Patel, N. G., Levy, M. A., Storeygard, A., Balk, D., Gittleman, J. L., & Daszak, P. (2008). Global trends in emerging infectious diseases. *Nature*, 451(7181), 990–993. Available at: <https://doi.org/10.1038/nature06536>. Taylor, L. H., Latham, S. M., & Woolhouse, M. E. J. (2001). Risk factors for human disease emergence. *Philosophical Transactions of the Royal Society B: Biological Sciences*, 356(1411), 983–989. Available at: <https://doi.org/10.1098/rstb.2001.0888>

⁸ Diagne, C., Leroy, B., Vaissière, A. C., Gozlan, R. E., Roiz, D., Jarić, I., Salles, J. M., Bradshaw, C. J. A., & Courchamp, F. (2021). High and rising economic costs of biological invasions worldwide. *Nature*, 592(7855), 571–576. Available at: <https://doi.org/10.1038/s41586-021-03405-6>

The most important international convention in this area is the Convention on International Trade in Endangered Species of Wild Fauna and Flora, better known as the CITES Convention,⁹ adopted in 1973 in Geneva. The Convention came into force two years later and has been ratified by 184 countries, including the Republic of Serbia.¹⁰ It provides protection for over 6,000 listed animal species and more than 34,000 plant species, by requiring special CITES permits for their trade or possession issued by the competent authorities of the signatory states. In Serbia, these permits are issued by the Ministry of Environmental Protection.

At the EU level, Regulation 338/97 on the protection of wild fauna and flora¹¹ was adopted, along with its implementing regulation.¹² In 2022, the EU also adopted the Action Plan Against Wildlife Trafficking, which established four key priorities:

- Preventing wildlife trafficking and addressing its root causes, by reducing consumer demand for illegally traded wildlife, supporting sustainable livelihoods in source countries, and tackling corruption at all levels;
- Strengthening the legal and policy framework against wildlife trafficking, by aligning EU and national policies with international commitments and latest evidence, and engaging with business sectors involved in the wildlife trade;
- Enforcing regulations and policies to fight wildlife trafficking effectively by improving the rate of detection of illegal activities within the EU, focusing on capacity-building along the entire enforcement chain, encouraging coordination and cooperation within and between Member States, and increasing efforts in tackling the *online* aspects of wildlife trafficking;
- Strengthening the global partnership of source, consumer and transit countries against wildlife trafficking, by enhancing their capacity and improving cooperation between the Member States, EU enforcement actors and key non-EU countries.

Regulation 338/97 on the protection of wild fauna and flora provides a comprehensive list of protected animal and plant species while also imposing strict and detailed requirements on member states regarding their trade and

⁹ *The Convention on International Trade in Endangered Species of Wild Fauna and Flora*. Available at: <https://cites.org/eng/disc/what.php>

¹⁰ Serbia ratified the CITES Convention in 2001 through the Law on the Ratification of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (*Official Gazette of the FRY – International Treaties*, No. 11/2001).

¹¹ European Council. (1996). *Council Regulation [EC] No 338/97 on the protection of species of wild fauna and flora by regulating trade therein*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01997R0338-20230520>

¹² European Commission. (2006). *Commission Regulation [EC] No 865/2006*. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32006R0865>

related permits. While it obligates member states to penalize certain behaviors, it does not mandate them to introduce specific criminal offenses related to illegal wildlife trade. This gap has been addressed by the recently adopted Directive 2024/1203 on Environmental Crime, which requires member states to introduce several criminal offenses directly related to the protection of wildlife species and mandates a minimum prison sentence of three years for such crimes.

Animal protection is a significant focus at the EU level, to the extent that the Lisbon Treaty, often considered the EU's constitutional framework to an extent, explicitly requires member states to consider the welfare of animals as sentient beings.¹³ Unfortunately, this awareness has not yet fully developed in Serbia. Thus, when drafting the national Animal Welfare Law and introducing the criminal offense of killing and abusing animals, debates emerged regarding the legally protected interest behind this criminalization¹⁴ and the constitutional basis of the Animal Welfare Law. Some scholars argue that animal welfare is not a constitutional category and could conflict with human rights and freedoms.¹⁵ This brings forth a fundamental question that will serve as the starting point of our discussion: Are animals even eligible for protection under criminal law?

ANIMALS AS SUBJECTS OF RIGHTS AND OBJECTS OF CRIMINAL LAW PROTECTION

In criminal law theory, the prevailing, traditional view holds that only humans and their fundamental values can be the object of criminal law protection. However, the introduction of the criminal offense of killing and abusing animals into Serbia's legal system under the 2005 Criminal Code, raised questions regarding the classification of these crimes.

¹³ Article 13 of Title II of the Treaty of Lisbon, among its general application provisions, states that: "In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, *since animals are sentient beings, pay full regard to the welfare requirements of animals*, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage." See: Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. *Official Journal of the European Union*, 2016/C 202/01.

¹⁴ Stojanović, Z. (2019). *Komentar Krivičnog zakonika*. Belgrade: Službeni glasnik, 875.

¹⁵ Ristivojević, B., Bugarski, T. (2014). Krivično delo 'ubijanje i mučenje životinja' iz čl. 269. KZ RS u svetlu Zakona o dobrobiti životinja. *Nauka, bezbednost, policija – Žurnal za kriminalistiku i pravo*, 1/2014.

Specifically, debate emerged over whether placing it under crimes against the environment was appropriate, given that it only partially serves to protect the environment.¹⁶ It has frequently been emphasized that animals and their rights cannot be granted legal protection under criminal law. The argument behind this stance is that since criminal law primarily protects the most important human values, it is unacceptable for it to extend this protection to include animals. According to this perspective, the offense of killing or abusing animals is ultimately about protecting humans, specifically, “protecting the feelings people have toward animals and the sense of responsibility they are expected to uphold.”¹⁷

In this context, it is now widely accepted that the “environment,” as an object of criminal law protection, represents an independent legal good safeguarded by the constitutions of many countries and numerous international documents.¹⁸ By analogy, the lives and well-being of animals, as sentient beings, should also be recognized as an independent legal good, i.e., interest worthy of legal protection for their own sake, not merely for the benefit of humans who have placed them in their service by establishing ownership. The counterargument to this claim asserts that environmental protection ultimately serves human interests. However, even from this human-centered perspective, protection should extend to the entire biosphere, which unquestionably includes animals, too.¹⁹

The argument against granting animals legal personhood typically hinges on the idea that rights are inherently tied to duties. Since animals cannot bear any responsibilities or duties/obligations, they should not possess any rights either.²⁰ However, the concept of legal personhood, in terms of the ability to hold rights and duties, is itself a legal, “fictive,” and flexible construct that evolves with prevailing beliefs and interests. Today, it’s widely accepted that legal personhood isn’t limited to humans as natural persons but that it also extends to legal entities as human-made constructs that lack consciousness

¹⁶ Stojanović, Z. (2019). Komentar Krivičnog zakonika. Belgrade: Službeni glasnik, 875.

¹⁷ *Ibid.*

¹⁸ Stojanović, Z. (2019). Komentar Krivičnog zakonika. Belgrade: Službeni glasnik, 857. For more on constitutional protection of the environment in Serbian law, see: Škulić, M. (2023). Ustavnopravna zaštita životne sredine. *Journal of legal theory and practice of the Bar Association of Vojvodina*, No. 4/2023, 1187–1217.

¹⁹ For more on this topic, see: Bajović, V. (2023a). Pravni status životinja – pokretne stvari ili nešto više? In: Ignjatović, Đ. (ed.) Kaznena reakcija u Srbiji – XIII deo. Belgrade, University of Belgrade, Faculty of Law, *Crimen* edition, 231–255.

²⁰ Ristivojević, B., Bugarski, T. (2014). Krivično delo ‘ubijanje i mučenje životinja’ iz čl. 269. KZ RS u svetlu Zakona o dobrobiti životinja. *Nauka, bezbednost, policija – Žurnal za kriminalistiku i pravo*, 7.

and will. In recent years, even some rivers, forests, and mountains have been granted legal personhood, reflecting a shift in how we define who or what can hold legal rights.²¹

Legal personhood is a fluid, evolving concept shaped by prevailing social, political, and economic interests. While it is now universally accepted that all humans possess legal personhood, this wasn't always the case. It wasn't until 1948, with the adoption of the Universal Declaration of Human Rights, that this status was guaranteed to everyone. Less than a century earlier, in 1856, the U.S. Supreme Court ruled that enslaved people were not legal persons. It held that the legal right of ownership over slaves was no different from any other form of property ownership. It also declared that Black people, whether enslaved or free, could never be citizens of the United States.²² This is why animal rights advocates argue that "lobbying" is crucial for granting animals legal personhood. They contend that this isn't a matter of scientific or legal reasoning but rather a question of political and social will.²³

The correlation between rights and duties as a prerequisite for being granted legal personhood falls apart when we consider that certain groups, such as children, individuals with mental illnesses, certain individuals with disabilities, and those deprived of legal capacity, have rights despite not bearing legal duties, e.g., responsibilities. In these cases, the responsibility for their actions, as well as the duty to protect others from any harm they might cause, falls on their parents, guardians, or legal representatives. In other words, those responsible for their care assume the legal responsibilities for their behavior on their behalf. There is no valid reason why this approach couldn't apply to animals in the same manner, except for the argument that they don't belong to the "right" (i.e., human) species, which shifts the debate into the territory of speciesism.²⁴

²¹ In New Zealand, legal personhood was granted to Te Urewera Forest, the Whanganui River, and Mount Taranaki in 2017. That same year, India's courts recognized legal personhood for the Ganges and Yamuna Rivers, while Colombia granted it to the Atrato River. For more on this topic, see: Maloney, M. (2018). Environmental Law: Changing the Legal Status of Nature: Recent Developments and Future Possibilities. *Law Society of NSW Law Journal*, 49:78.

²² *Dred Scott v. Sanford*, 60 US. 393 (1856), As cited in: Vasić, R., Jovanović, M., Dajović, G. (2018). *Uvod u pravo*. Belgrade, Faculty of Law, 299.

²³ Shyam, G. (2019). How Community Attitudes can Strengthen Arguments for Changing the Legal Status of Animals. *Society Register*, 3 (3), 68.

²⁴ Speciesism is a term coined by analogy with other forms of discrimination and gained widespread use after Peter Singer introduced it in his book *Animal Liberation*. However, Singer himself acknowledged that he did not invent the term; it was first used by British psychologist Richard Ryder in 1970. Todorović, Z. (2018). *Emocije životinja, evolucioni kontinuitet i etičke implikacije*, PhD thesis. Faculty of Philosophy, University

Globally, there is a growing push to protect animals and ensure their well-being, not only out of empathy and compassion for their suffering but also to help preserve humanity's only habitat: planet Earth. Biodiversity refers to "the variety of living organisms, both plants and animals, on our planet, encompassing numerous ecosystems sustained by interconnected cycles and chain reactions. The loss of even a single species can disrupt these cycles, potentially endangering entire the stability of an entire ecosystem."²⁵ Unfortunately, Serbian law still lags behind these international trends, particularly in practice. Provisions of the Animal Welfare Act are rarely enforced, and the number of criminal proceedings for animal abuse and killing remains strikingly low compared to the number of reports and criminal complaints filed.²⁶ Moreover, the penalties imposed are often minimal and even trivial, failing to serve as an effective deterrent and discourage potential offenders from committing these crimes.²⁷

EU ENVIRONMENTAL CRIME DIREKTIVE 2024/1203

Directive 2024/1203 on environmental crime (hereinafter referred to as "the Directive") was adopted on March 26, 2024. EU member states are required to incorporate it into their national legal systems by May 21, 2026. The Directive was preceded by *Eurojust* reports highlighting that environmental crime is one of the main revenue sources for organized crime, is highly prevalent, and poses a serious threat to entire ecosystems and national financial systems.²⁸ The reports also emphasize that environmental crime generates

of Belgrade. U4 Exper Answer, *Wildlife crime and corruption*. Available at: <https://www.u4.no/publications/wildlife-crime-and-corruption.pdf>, p. 94, fn. 76. Đ. Ignjatović defines speciesism as a bias in favor of members of one's own (human) species at the expense of the interests of other living beings, primarily animals. Ignjatović, Đ. (2023). *Zelena kriminologija i kontrola kriminaliteta. Crimen (XIV) 1/2023*, 31.

²⁵ Ignjatović, Đ. (2023). *Op. cit.*, 31.

²⁶ For instance, in 2021, 231 criminal complaints were filed for animal abuse and killing, but only 28 led to indictments, meaning criminal proceedings were initiated in just 12% of cases. Statistical Office of the Republic of Serbia, 2022, *Bulletin – Adult Perpetrators of Criminal Offenses in the Republic of Serbia, 2021*, (Available at: <https://publikacije.stat.gov.rs/G2022/Pdf/G20225689.pdf>)

²⁷ For more on this topic, see: Bajović, V. (2023b). *Kaznenopravna zaštita životinja u Republici Srbiji In: Aktuelna pitanja savremenog zakonodavstva i pravosuđa. Proceedings from the Legal Conference*, Budva, Montenegro, June 2–6, 2023, 263–283.

²⁸ European Union Agency for Criminal Justice Cooperation. (2021). *Report on Eurojust's Casework on Environmental Crime*, January 2021. Available at: https://www.eurojust.europa.eu/sites/default/files/assets/report_environmental_crime.pdf

exceptionally high profits while carrying a relatively low risk of detection and prosecution.²⁹

According to Article 1 of the Directive, its goal is not to harmonize the national laws of member states in this area but to establish minimum standards that must be upheld, leaving room for states to introduce stricter measures if they decide to. Member states are required to introduce new environmental offenses and their aggravated forms into their legal systems, impose strict, proportionate, and adequate penalties, and introduce so-called ancillary penalties, e.g., supplementary or secondary sanctions. The Directive also calls for more consistent, stricter, and more appropriate penalties for legal entities, particularly companies involved in environmental offenses. Furthermore, it emphasizes the need to improve the detection and prosecution of environmental crimes by increasing human, financial, and technical resources dedicated to combating them.

From a legislative drafting perspective, these obligations are divided into two separate points within the Directive, depending on the type of animal or plant species involved. Specifically, point (N) of Article 3, paragraph 2 of the Directive refers to species protected under Directive 92/43/EEC on the conservation of natural habitats and wild fauna and flora, as well as Directive 2009/147/EC on the conservation of wild birds.³⁰ Point (O) of the same article refers to Council Regulation (EC) No. 338/97, which governs the protection of wild fauna and flora species through the regulation of their trade. The legal object of the offense is the same in both cases, referring to protected wild plant and animal species. However, the acts constituting the offense differ. Under point (N), the prohibited acts include killing, destruction, capture, possession, sale, or offering for sale, while point (O) criminalizes the commercial trade or import of wild fauna or flora specimens.³¹ The “complex” legislative drafting solutions reflect the blanket nature of Directive 1203/2024, which references

²⁹ European Parliament. (2023). *Environmental crimes: deal on new offences and reinforced sanctions*, press release of 16 November 2023. Available at: <https://www.europarl.europa.eu/news/en/press-room/20230929IPR06108/environmental-crimes-deal-on-new-offences-and-reinforced-sanctions>

³⁰ This provision criminalizes the killing, destruction, taking of, possession, sale, or offering for sale of a specimen or specimens of a species of wild fauna or flora listed in Annex IV or in Annex V where species in that Annex are subject to the same measures as those adopted for species in Annex IV, to Council Directive 92/43/EEC (34) and of a specimen or specimens of the species referred to in Article 1 of Directive 2009/147/EC of the European Parliament and of the Council (35), except where such conduct concerns a negligible quantity of such specimens.

³¹ This provision criminalizes the trade of a specimen or specimens, or parts or derivatives thereof, of a species of wild fauna or flora listed in Annexes A and B to Council Regulation (EC) No. 338/97, as well as the import of a specimen or specimens, or parts or derivatives thereof, of such species listed in Annex C to that Regulation, except where

other regulatory acts.³² Nonetheless, the intent behind it and the message it sends to member states are clear: the acts of killing, possession, trade, import, and export of protected wildlife species and their derivatives must be explicitly criminalized and strictly punished.

Additionally, the Directive criminalizes placing certain goods or products on the EU market, making them available within the EU, or exporting them from the EU in violation of Article 3 of EU Regulation 2023/1115,³³ except in cases involving negligible quantities (Article 3, paragraph 2, point (p)). This provision also applies to goods and products of animal origin. Under this broad formulation, even pet stores selling wild and protected animal species could be subject to criminal liability, which isn't surprising given that it is not uncommon to see certain pet shops offering live rodents or rabbits as food for snakes and other animals.

Point (q) of the same article classifies as a criminal offense “any conduct which causes the deterioration of a habitat within a protected site, or the disturbance of animal species listed in Annex II, point (a), to Directive 92/43/EEC within a protected site, within the meaning of Article 6(2) of that Directive,³⁴ where such deterioration or disturbance is significant”. By its nature, the degradation of a protected habitat or interference with wildlife would likely involve the commission of another criminal offense beforehand.

Point (r) classifies as a criminal offense the bringing into the territory of the Union, placing on the market, keeping, breeding, transporting, using, exchanging, permitting to reproduce, growing or cultivating, releasing into the environment, or the spreading of invasive alien species of Union concern, but under two conditions. The first condition is that such actions are “likely to

such conduct concerns a negligible quantity of such specimens. Attempted offenses are also punishable (Article 4, para. 2).

³² Point (N) refers to Directive 92/43/EEC of May 21, 1992, on the conservation of natural habitats and wild fauna and flora, as well as Directive 2009/147/EC of November 30, 2009, on the conservation of wild birds. Point (O) refers to Council Regulation (EC) No. 338/97 of December 9, 1996, on the protection of species of wild fauna and flora by regulating trade therein.

³³ According to Article 3 of Regulation 2023/115, such goods and products may be placed on the market or exported only if they are not linked to deforestation or forest degradation, are produced in compliance with the relevant legislation of the country of origin, and are accompanied by a due diligence statement. Regulation (EU) 2023/1115, of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010.

³⁴ According to this article, “Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated.” Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil, or water, or substantial damage to an ecosystem, animals, or plants.” The second condition, set alternatively, establishes that such actions must violate the restrictions outlined in Article 7(1) of Regulation (EU) No. 1143/2014 of the European Parliament and of the Council,³⁵ or if a permit issued under Article 8 of Regulation (EU) No 1143/2014 or of an authorization granted under Article 9 of that Regulation.

The Directive requires EU member states to impose a minimum prison sentence of three years for these offenses (Article 5, Paragraph 2(e)), with an emphasis on imposing criminal liability on legal entities, which may face sanctions such as license revocation, exclusion from access to public funding, or even temporary or permanent disqualification from the practice of business activities (Article 7, Paragraph 2), as well as strict financial penalties, ranging from 3 % to 5 % of a company’s total annual worldwide turnover or fixed fines between 24 and 40 million euros (Article 7, Paragraph 3).

CRIMINAL OFFENSES AGAINST ANIMALS IN THE CRIMINAL LAW OF THE REPUBLIC OF SERBIA

As discussed in the previous section, Directive 2024/1203 mandates the criminalization of various acts targeting wild animal species and their derivatives, including killing, destruction, possession, sale or offering for sale, import, and export. While most of these actions are already punishable under existing criminal law, the current provisions are often inadequate. The prescribed penalties are significantly lower than those required by the Directive, and the number of initiated criminal proceedings and imposed sanctions remains negligible.

Killing and Wanton Abuse of Animals

The killing or abuse of specially protected animal species constitutes an aggravated form of the criminal offense of animal killing and abuse under

³⁵ This article stipulates that invasive alien species of Union concern shall not be intentionally introduced into the territory of the Union, including during transit under customs supervision. Additionally, they must not be kept, bred, grown, cultivated or permitted to reproduce (including in contained holding), transported to, from or within the Union, placed on the market, used, exchanged, or released into the environment. Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species.

Article 269, Paragraph 2 of the Criminal Code of the Republic of Serbia. These strictly protected species are listed in the Regulation on the Proclamation and Protection of Strictly Protected and Protected Wild Species of Plants, Animals, and Fungi³⁶ (hereinafter: Regulation) adopted by the Ministry of Environmental Protection of the Republic of Serbia. The list includes species such as the Balkan and Carpathian lynx, brown bear, imperial eagle, beaver, numerous bird species, dozens of mammals, amphibians, fish, and insects. However, the key issue lies in the fact that the Regulation only recognizes animals native to Serbia as protected species. This raises the question of how the law would classify the killing or abuse of a wild animal not included on the list, such as a lion, tiger, or parrot illegally imported into Serbia. Animals that fall victim to illegal trade and smuggling are often transported and kept in extremely poor conditions. They are deprived of proper nutrition, confined in cages that are far too small, and subjected to severe stress, which in itself constitutes abuse and frequently leads to their death. In our view, in such cases, the offense of animal killing and abuse should be considered in its aggravated form if the species is protected under the CITES Convention, given that Serbia has ratified this treaty. Article 144, Paragraph 1 of the Constitution of the Republic of Serbia,³⁷ obligates judges to rule in accordance with the Constitution, ratified international treaties, laws, universally accepted rules of international law, and other general acts adopted in accordance with the law. This means that, when determining whether an animal qualifies as a specially protected species, judges should consider not only the provisions of the aforementioned national Regulation but also those of the CITES Convention.

The lack of alignment with the Directive is also evident in the prescribed penalties. While the Directive mandates a minimum prison sentence of three years for killing protected wild species, Serbian law sets three years as the maximum penalty for this offense. Moreover, since this provision was introduced, the maximum sentence has never been imposed in practice.

Another major issue is that killing these animals is often difficult to prove. In most cases, there are no witnesses, surveillance footage, or other evidence to identify the perpetrator. On top of this, there is little public awareness that killing certain protected species of reptiles, insects, and amphibians even constitutes a criminal offense. This reinforces the observation that offenses under Article 269 of the Criminal Code are usually reported when the victims are animals to which people are emotionally attached, such as dogs, cats, or

³⁶ Pravilnik o proglašenju i zaštiti strogo zaštićenih i zaštićenih divljih vrsta biljaka, životinja i gljiva, *Official Gazette of RS*, No. 5/2010 and 47/2011.

³⁷ Constitution of the Republic of Serbia, *Official Gazette of RS*, No. 98/2006 and 115/2021.

horses.³⁸ Strictly protected animal species rarely interact directly with humans, as they typically live in natural habitats. Thus, killings, such as those of lynxes or brown bears, most often occur during illegal hunting activities, which are defined as a separate criminal offense. It is, therefore, no surprise that there have been no criminal proceedings or convictions recorded for the killing or abuse of strictly protected animal species in Serbia so far. From a legislative perspective, this offense might be more effectively regulated as a separate criminal offense or incorporated into laws on illegal hunting or other environmental crimes, rather than treated as an aggravated form of animal abuse. This is also partly due to the division of responsibility. Namely, dogs, cats, and other domestic animals fall under the jurisdiction of the Ministry of Agriculture – Veterinary Directorate, while wild animals and strictly protected species are overseen by the Ministry of Environmental Protection. As a result, even if someone witnessed the killing of a bat or a snake or recorded it on their phone, confusion would probably exist regarding which inspection authority to contact in order to determine whether the animal was a protected species. By the time the jurisdiction issue is sorted out, any evidence could easily be destroyed or removed.

Import and Export of Wild Animals (Wildlife Trade)

The classification of a criminal offense in cases of illegal import or export of wild animals depends on whether the species involved is strictly protected. Strictly protected species are considered a protected natural asset, meaning their destruction, damage, import, or export falls under Article 265, Paragraph 3 of the Criminal Code of the Republic of Serbia. This provision defines such acts as a special form of the criminal offense of destruction, damage, export, or import of a protected natural asset. This provision stipulates that anyone who, contrary to regulations, exports or takes abroad a strictly protected or protected plant or animal species or imports a foreign species of plant or animal protected by international treaties and documents into Serbia shall be punished with imprisonment ranging from three months to three years and a fine. However, this penalty does not meet the requirements of the Directive, which mandates that member states set a minimum prison sentence of three years for such offenses. Additionally, an attempt to commit this offense is explicitly criminalized since such attempts would not be punishable under general provisions given the prescribed sentence, without this specific provision.

³⁸ Stojanović, Z. (2019). *Komentar Krivičnog zakonika*. Belgrade: Službeni glasnik, 876. Bajović, V. (2023a). Pravni status životinja – pokretne stvari ili nešto više. In: Ignjatović, Đ. (ed.) *Kaznena reakcija u Srbiji – Part XIII*. Belgrade, University of Belgrade, Faculty of Law, *Crimen*, 247.

By analyzing this, A. Todorović rightly points out that the legislator does not specifically refer to a ratified international treaty. Instead, the law extends protection to all plants and animals covered by any international document or agreement, even those that Serbia has not signed.³⁹ It is debatable whether this approach reflects a well-intentioned idea or a legislative oversight, considering the exceptionally large number of species protected under various international agreements. As Todorović notes,

“...it would impose a disproportionately high cost on Serbia to unilaterally compile, update, and monitor such lists through its own regulations.”⁴⁰

It would be even more unrealistic to expect customs officers who are responsible for overseeing imports and exports to be aware of whether a particular plant or animal species is protected under an international agreement or document that does not legally bind Serbia. For this reason, despite the poor wording of this provision, a narrower interpretation seems more practical. This would limit it to species protected by domestic regulations and international treaties ratified by Serbia, primarily the CITES Convention, which explicitly lists protected plant and animal species. However, it is an indisputable fact that, under the current wording of this provision, criminal liability could extend to anyone who imports or exports a plant or animal species not listed as protected under the Regulation on the Proclamation and Protection of Strictly Protected and Protected Wild Species of Plants, Animals, and Fungi or the CITES Convention, but which is protected by another international treaty or document even if not signed by Serbia.

Nevertheless, these considerations remain largely theoretical, given that in practice, criminal proceedings for this offense are almost nonexistent. According to the latest statistics, only four criminal complaints were filed for the offense under Article 265 of the Criminal Code in 2023, two of which were dismissed. This does not imply that the offense is rarely committed in practice but rather that it is difficult to detect and prove. Committing this offense may overlap with the crime of smuggling under Article 236 of the Serbian Criminal Code, raising the following question: When does the import or export of wild animal species constitute an offense under Article 265(3) of the Criminal Code, and when does it fall under the crime of smuggling?

Smuggling is committed by anyone transporting goods across a customs border while evading customs control measures or who, while evading such measures, does so armed, in a group, or using force or threats. The basic form

³⁹ Todorović, A. (2023). Šest modaliteta uticaja međunarodnog prava na krivično-pravnu zaštitu životne sredine. *Revija za kriminologiju i krivično pravo*, 61 (2), 36–38.

⁴⁰ Todorović, A. (2023). *Op. cit.*, 37.

of smuggling is punishable with imprisonment of six months to five years, along with a fine. A more severe form of this offense applies when the perpetrator is engaged in selling, distributing, or concealing untaxed goods or organizing a network of resellers or intermediaries for the distribution of such goods. In these cases, the penalty increases to one to eight years in prison, plus a fine. Given the lighter penalty prescribed for the offense under Article 265(3) of the Criminal Code, offenders have a clear incentive to seek its classification under this provision rather than under the more severely punished crime of smuggling.

The offense under Article 265(3) of the Criminal Code applies only when a protected animal species is transported across the border. However, customs officers cannot be expected to know which species are on the list of protected animals, nor can they, even with access to such a list, visually identify whether, for example, a particular parrot species is protected or not. In such cases, customs officials verify whether the individual possesses the required import/export permits and make their decision based on this documentation.

The import and export of protected animal species may be permitted under Article 28 of the Law on Nature Protection.⁴¹ Therefore, for the offense under Article 265(3) of the Criminal Code to exist, the import/export of protected species must be carried out in violation of regulations. Smuggling, on the other hand, involves evading customs control measures, which means that the animals are transported outside official customs checkpoints or hidden inside a vehicle. However, a single instance of such transportation is not sufficient to constitute the crime of smuggling. In that case, the act would instead be classified as a customs offense under Article 292 of the Customs Law. For the crime of smuggling to exist, the perpetrator must be *engaged in* transporting goods or armed, or the act must involve a group of individuals, force, or threats. Furthermore, smuggling is not limited to protected animal species but applies to the transport of any goods while evading customs control measures. This raises an important question: Can animals, as living and sentient beings, be considered goods?

Can Animals Be Considered Objects or Goods?

Despite the well-known and indisputable biological fact that animals are living beings that, like humans, are born, breathe, live, and die, Serbian law equates them with movable property from a legal perspective. Although no specific legal provision explicitly defines animals as movable property, they

⁴¹ Law on Nature Protection, *Official Gazette of RS*, No. 36/2009, 88/2010, 91/2010 – *amd.*, 14/2016, 95/2018 – *other law*, and 71/2021.

are treated as such in both legal theory and judicial practice, holding their owners or keepers responsible for their behavior. If an animal causes damage to another person (for example, if a cow knocks down a neighbor's fence or pigs destroy neighboring crops), the owner of the animal will be held civilly liable under the legal framework governing liability for damage, injury or loss caused by dangerous objects or activities (Articles 173–177 of the Law of Contract and Torts⁴²). If an animal poses a threat to someone's life or body (physical integrity) or larger-scale property, its owner may face criminal liability for endangering general public safety (Article 278 of the Serbian Criminal Code), as judicial practice recognizes animals as generally dangerous objects in such cases.⁴³ The Serbian Civil Code draft dedicates a specific section to liability for damage caused by animals (Articles 314–317), but places it under Section 4, which regulates liability for dangerous objects or activities. This means it does not deviate from the existing legal theories and practices, which equate animals with movable property.⁴⁴

Categorizing them as objects effectively denies animals their rights, because it is evident that objects and property, in and of themselves, cannot possess any legal rights or interests. Rather, their owner holds all the rights over them and is able to treat them however they wish. Unlike inanimate objects, or “things” in both the literal and legal sense of the word, animals experience pain and other sensations, possess the capacity to act independently, and certain species undoubtedly exhibit complex emotions and high levels of intelligence. This prompts the inquiry into why these biological realities have remained unrecognized by the legal system for centuries.

In recent years, with the growing awareness that animals are emotional beings and, as such, should be provided adequate protection, perceiving animals as objects inevitably needs to be called into question. As a result, some legal systems have explicitly stated that animals are not objects, or property and thus, humans must not treat them as such. In Serbian law, the first (although not explicit) deviation from this categorization can be found in the introduction of the criminal offense of killing and abusing animals, as per Article 269 of the Criminal Code of the Republic of Serbia, for which the animal's

⁴² Law of Contract and Torts, *Official Gazette of SFRY*, No. 29/78, 39/85, 45/89 – Decision of the Constitutional Court of the SFRY and 57/89, *Official Gazette of FRY*, No. 31/93, *Official Gazette of SCG*, No. 1/2003 – Constitutional Charter, and *Official Gazette of RS*, No. 18/2020.

⁴³ Stojanović, Z. (2019). *Komentar Krivičnog zakonika*. Belgrade: Službeni glasnik, 893.

⁴⁴ For more on this topic, see: Stojanović, N. (2018). Odgovornost za štetu koju životinja prouzrokuje prema prednacrtu Građanskog zakonika Republike Srbije. *Collection of Papers*, Faculty of Law, Niš, No. 81, Year LVII, 321–347.

owner can also be held accountable, even though the owner is simultaneously allowed do whatever they please with objects and property in their possession. A “movable property,” as such, cannot be killed or abused; only living, sentient beings can fall victim to such offenses this sense. Nonetheless, in other aforementioned instances, when an animal causes harm or injury to another, the owner’s responsibility is based on their liability for owning the “dangerous object” involved.⁴⁵ Similarly, in the absence of appropriate criminal charges, judicial practice categorizes animals as goods in order to classify their illegal import or export by circumventing customs controls as smuggling and their trade as unlawful, e.g., illegal commerce. This classification is inadequate, considering that smuggling and unlawful commerce are economic crimes aimed at protecting the customs system and markets. Crimes against wild animal species, on the other hand, primarily fall under criminal offenses against nature or the ecosystem and may also pose safety and health risks in cases of importing or breeding dangerous or invasive (alien) animal species.

Wildlife trade

Purchasing, selling, or offering wild animal species for sale, as incriminated by Directive 2024/1203, can be classified under the criminal offense of unlawful, that is, illegal trade according to Article 235 of the Criminal Code in Serbia’s legal system. Under this Article, this crime is committed by anyone who, “without authorization for trading, procures goods or other objects of a substantial value for the purpose of sale, or who without authorization and to a substantial degree engages in trade or in mediation in trade or engages in representation of organizations in the domestic or foreign movement of goods and services”. For this basic form of this offense, a fine or a prison sentence of up to two years is prescribed. More severe forms exist if someone engages in the sale of goods whose production they have illegally organized or if they unlawfully sell, buy, or exchange goods or items whose trade is prohibited or restricted, carrying a prison sentence of only three months to three years. The most severe form of this offense applies if the perpetrator has organized a network of dealers or middlemen, or has acquired material gain exceeding four hundred and fifty thousand Serbian dinars. In that case, the perpetrator can be sentenced to imprisonment from six months to five years.

Likewise, as seen in the previously discussed cases, the penalties for these offenses also remain substantially less severe than those mandated by

⁴⁵ For more on this topic, see: Bajović, V. (2023a). Pravni status životinja – pokretne stvari ili nešto više? In: Ignjatović, Đ. (ed.) Kaznena reakcija u Srbiji – Part XIII. Belgrade, University of Belgrade, Faculty of Law, *Crimen*, 231–255.

the Directive. Additionally, animals are once again classified as mere goods, which is inadequate and has been a recurring concern. Another complication arises from the stipulation that the goods must have been acquired “at a higher value” for the criminal charge to be applicable. Nonetheless, accurately gauging the market value of wild animals and determining whether they meet the criteria for “higher value” proves to be a challenging and complex task.

The term “acquisition of goods” for the purpose of sale, as a form of executing the offense, implies coming into possession of the goods based on any legal grounds. However, it does not apply to instances where the goods have been obtained through criminal activities, which negates the possibility of considering it as the criminal offense of illegal trade.⁴⁶ This criminal offense would, therefore, undoubtedly exist if the perpetrator lawfully acquired a wild animal in a foreign country where their trade is permitted and then sold it on the grounds of Serbia. The issue with the trade of wild animal species is that these “goods” are mostly obtained through illegal hunting, i.e., the commission of a criminal offense, typically carried out by other individuals in foreign countries who are unknown or inaccessible to local authorities. Consequently, this raises the question of whether a perpetrator involved in the trade of wild animals can be held criminally liable for unlawful trade at all. A negative answer would absolve them from any sanctions being imposed on them, while a positive one would provide grounds for deviating from the aforementioned practice requiring that possession of goods be legally obtained.

Possession of Wild Animals as Pets

Article 3, para. 2, p. N of the Directive requires member states to criminalize the possession of wild animals protected by Directive 92/43/EEC.⁴⁷ In the Serbian legal framework, merely possessing wild animals does not constitute a criminal offense. However, it may be regarded as animal abuse and cruelty due to the often inadequate and inhumane living conditions these animals endure. Nonetheless, the law complicates matters once again, as housing wild or protected species without the requisite permits and approvals is subject to administrative penalties under other laws.

Keeping wild and exotic animals as pets is governed by Article 58 of the Animal Welfare Law.⁴⁸ Under these regulations, keeping and breeding wild

⁴⁶ Stojanović, Z. (2019). *Komentar Krivičnog zakonika*. Belgrade: Službeni glasnik, 788.

⁴⁷ European Council. (1002). *Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora*.

⁴⁸ Law on Animal Welfare, *Official Gazette of RS*, No. 41/2009.

and exotic animals as pets can only be carried out based on an official decision granting approval for their possession and breeding, issued by the Minister of Agriculture contingent upon prior consent from the minister in charge of environmental matters. It is further stipulated that the minister must issue a decision within 30 days following the submission of a request and that the Minister of Agriculture, with the consent of the minister overseeing environmental affairs, shall prescribe more detailed conditions regarding the keeping of wild and exotic animals. Violating these regulations, i.e., keeping and reproducing wild and exotic animals without authorized approval, is considered an offense (Article 82, Paragraph 1, Item 72), for which a legal entity could face fines ranging from 100,000 to 1 million dinars, a natural person may be fined between 5,000 and 50,000 dinars, and an entrepreneur may be fined between 50,000 and 500,000 dinars. Although the Animal Welfare Law (AWL) was adopted in 2009, there have been no subsequent regulations detailing the conditions for keeping wild and exotic animals as pets, nor have there been frequent misdemeanor proceedings for the offense under Article 82, Paragraph 1, Item 72 of the AWL. The Veterinary Inspection Department of the Veterinary Directorate, responsible for enforcing the AWL, lacks the authority to enter private residences and assess whether any wild animals are being kept and under what conditions without the owner's consent or a court order. As a result, these provisions are essentially a dead letter. If it concerns the keeping and breeding of strictly protected or protected wild species, the Law on Nature Protection governs these activities, and its implementation and oversight are the responsibility of the Ministry of Environmental Protection. Article 88 of this Law requires anyone who keeps such an animal to submit an application to the Ministry of Environmental Protection for the issuance of a certificate, which the ministry keeps records of. If the individual intends to breed or artificially propagate these species, they must obtain a permit from the ministry (Article 89, paragraph 1). Breeding facilities where specimens of strictly protected wild species are bred in compliance with the CITES convention may apply for permits for cross-border trade for commercial purposes, provided that the breeding facility is registered with the CITES Secretariat. Engaging in these activities, i.e., keeping or breeding protected wild species without a permit or approval from the Ministry, constitutes an offense. For this violation, legal entities face fines ranging from 500,000 to 2 million dinars (Article 126, para. 1, it. 20a and 22 of the Law on Nature Protection), while a natural person may be fined between 50,000 and 150,000 dinars or sentenced to up to 30 days in prison (Article 126, para. 5 of the Law on Nature Protection).

The lenient penalties set for this offense do not align with the Directive's requirements, which mandate EU member states to impose a minimum prison sentence of three years for the possession of wild animals. Furthermore,

misdeemeanor proceedings related to the possession of wild animal species are exceedingly rare in the Serbian legal system, despite the fact that many individuals openly “advertise” and boast about owning them on social media platforms. In such instances, the High-Tech Crime Prosecutor’s Office should intervene to identify the perpetrator hiding behind a pseudonym and IP address. Unfortunately, the problem arises from this prosecutor’s office being constrained from taking any action concerning misdemeanors.

DIFFERENTIATING BETWEEN CRIMINAL OFFENSES AND MISDEMEANORS IN THE CONTEXT OF ANIMAL WELFARE PROTECTION

In the field of animal protection, many offenses are subject to both criminal and administrative sanctions. The legal characteristics of criminal offenses and misdemeanors often overlap, which presents a significant challenge, as it often results in scenarios where initiating misdemeanor proceedings and imposing administrative penalties essentially protects perpetrators from criminal liability. For instance, the conduct constituting the criminal offense under Article 269 of the Criminal Code of the Republic of Serbia largely overlaps with numerous misdemeanors outlined in the Law on Animal Welfare, which highlights the issue of differentiating between criminal offenses and misdemeanors in light of the principle of *ne bis in idem*, which prevents individuals from being tried twice for the same act.

The Law on Environmental Protection⁴⁹ outlines various actions that are classified as economic offenses or misdemeanors, which are also detailed in the aforementioned criminal offenses. According to this legislation, an economic offense is defined as the cross-border trade of wild flora and fauna specimens (including import, export, introduction, removal, and re-export) and their developmental forms and parts, if carried out without the required permit or documentation issued by the Ministry (Article 116, item 5), as well as the collection or placing on the market of certain species of wild flora and fauna, their developmental forms, and parts, without a permit from the Ministry, or in violation of the conditions determined by the permit (Article 116, item 4). Under the same law, a natural person is administratively liable if they disturb, abuse, injure, or destroy wild flora and fauna or their habitats (Article 118, item 1); collect or trade certain species of wild flora and fauna, their

⁴⁹ Law on Environmental Protection, *Official Gazette of RS*, No. 135/2004, 36/2009, 36/2009 – amd., 72/2009 – amd., 43/2011 – decision of the Constitutional Court, 14/2016, 95/2018 – amd. and 95/2018 – amd.

developmental forms, or parts, without the Ministry's permit, or contrary to the conditions specified in the permit (Article 118, item 3); or export or import protected wild flora and fauna species, their developmental forms, or parts, without the Ministry's permit (Article 118, item 4). As noted earlier, smuggling requires the transfer of goods while evading customs oversight, whereas a single act of such nature would only constitute a customs violation.

The issue arises from the fact that all of these laws were established prior to the "revolutionary" decision of the European Court of Human Rights (ECtHR) in the case of *Maresti v. Croatia*.⁵⁰ This ruling prompted a reevaluation of the relationship between criminal offenses and misdemeanors across the region that emerged from the legal heritage of the former SFRY. This framework recognized three types of offenses (criminal offenses, economic offenses, and misdemeanors), each safeguarding distinct legal interests, e.g., different subjects of legal protection. Prior to this decision, the prevailing view in both domestic theory and practice maintained that criminal and misdemeanor procedures were two separate legal processes addressing different types of offenses, with the *ne bis in idem* principle applying solely to the prohibition of retrial in criminal proceedings. In this regard, it was emphasized that the prohibition of retrials does not exclude the initiation of criminal proceedings when a different legal process has preceded it for an offense stemming from the same incident (such as disciplinary, misdemeanor, or economic offense proceedings)⁵¹, and this stance has been consistently upheld in practice, too. Furthermore, these interpretations were also supported by legislative provisions. The Criminal Code only obliges the court to consider any punishment already served or paid for the misdemeanor when imposing the sentence for the criminal offense (Article 63, para. 3 of the Criminal Code).⁵² Under the previous Misdemeanor Law from 2005, misdemeanor proceedings could be initiated or continued if the criminal proceedings for the same incident ended in a dismissal, acquittal, or rejection of the charges, provided that the statute of limitations for misdemeanor prosecution had not expired.⁵³

The provisions above did not prevent an individual from being convicted for both a criminal offense and a misdemeanor, with the obligation to account for the sentence already served for one offense. Had these provisions remained in force, the normative overlap between misdemeanors and criminal offenses

⁵⁰ *Maresti v. Croatia*, (Application no. 55759/07). Judgment of 25 June 2009.

⁵¹ Vasiljević, T. and Grubač, M. (2005). *Komentar Zakonika o krivičnom postupku*. Belgrade, Justinijan, 38.

⁵² This provision remains in force, which means that the criminal legislator does not exclude the possibility of simultaneous misdemeanor and criminal sanctions for a criminal offense that also contains the characteristics of a misdemeanor.

⁵³ Misdemeanor Law, *Official Gazette of RS*, No. 101/2005, 116/2008 and 111/2009.

would not have posed any problem. However, the rulings by the ECtHR in the cases of *Maresti v. Croatia*, *Milenković v. Serbia*,⁵⁴ and *Muslija v. Bosnia and Herzegovina*,⁵⁵ highlighted the need for a different approach to this issue.

The existing Misdemeanor Law prohibits the initiation and conduct of misdemeanor proceedings once a final judgment in a criminal case has been reached for an offense that qualifies as a misdemeanor. If both proceedings are initiated simultaneously or if a criminal procedure is initiated before a misdemeanor procedure is completed, the Misdemeanor Law obliges the misdemeanor court to submit the case files to the criminal court. Accordingly, priority is clearly given to the criminal procedure over the misdemeanor procedure. However, if criminal proceedings later establish that the offense in question lacks the elements of a criminal offense, this would prevent the sanctioning of the perpetrator in the misdemeanor proceedings due to both the statute of limitations and the enforcement of the *ne bis in idem* principle. Given that an acquittal in criminal proceedings, by explicit legal wording, precludes the initiation of misdemeanor proceedings, this means that an acquittal for a criminal offense under Article 269 of the Criminal Code also absolves the perpetrator from misdemeanor liability under the Environmental Protection Law.

In practice, misdemeanor proceedings are typically initiated and concluded before criminal proceedings, which raises the question of how a misdemeanor judgment impacts the subsequent course of the criminal case. In all the aforementioned cases before the ECtHR, such situations were problematic, where a person was first punished in misdemeanor proceedings and later in criminal proceedings for legally and factually overlapping offenses. According to this interpretation, if the perpetrator were convicted of a misdemeanor and fined accordingly, this would later prevent their criminal liability. This poses a significant risk that a relatively minor misdemeanor conviction might obstruct the initiation of subsequent criminal proceedings. In this way, the legal protection could be “exhausted” by punishing the perpetrator for a misdemeanor rather than a more severe criminal offense.

There are several ways out of this “logical deadlock.” The first and most ideal solution would be to regulate this on a normative level, with the legislator clearly distinguishing between what constitutes a criminal offense of killing and abusing animals and what constitutes a misdemeanor, without any normative overlap in their characteristics.⁵⁶ A second, procedural solution

⁵⁴ ECtHR, *Milenkovic v. Serbia*, (Application No. 50124/13). Judgment of March 1, 2016.

⁵⁵ ECtHR, *Muslija v. BiH*, (Application No. 32042/11). Judgment of January 14, 2014.

⁵⁶ In this context, Škulić emphasizes that it would certainly be most appropriate for the legislator to carefully “cleanse” our criminal legislation, particularly regarding the

would involve ensuring that when criminal and misdemeanor resolve a case by ruling that the act does not amount to a criminal offense or misdemeanor, they issue a decision that does not prevent the future initiation of another (criminal or misdemeanor) proceeding in accordance with the *ne bis in idem* principle. For instance, if a “criminal” court determines during the proceedings that the essential elements of the criminal offense under Article 269 of the Criminal Code are not met yet recognizes that the elements of a misdemeanor under the Animal Welfare Law do exist, the court should issue a decision to dismiss the indictment.⁵⁷ This would prevent the obstruction of later misdemeanor prosecution for the “same offense.” Likewise, if a misdemeanor court determines that a criminal offense is pertinent, it should render a decision to dismiss the request for initiating misdemeanor proceedings, thereby enabling the potential initiation of criminal proceedings in the future.⁵⁸ A third option would be to make changes to the current system implying that the competent authorities assess whether to initiate criminal or misdemeanor proceedings on a case-by-case basis, which often results in neither action being taken due to the shifting of jurisdiction and responsibility. Alternatively, it can lead to the swift initiation of misdemeanor proceedings in order to intentionally protect the offender from criminal liability.

overlapping existence of a large number of misdemeanors and certain criminal offenses, which, by their definitions or key characteristics, bear strong similarities to misdemeanors. Furthermore, it is necessary to finally determine, taking into account primarily the ultima ratio nature of criminal legislation, as well as certain criminal-political factors, whether a particular act (committing or failing to commit in cases where there is a duty to act) should be classified as a misdemeanor or criminal offense, rather than allowing for the possibility of both classifications. (M. Škulić, (2022). Načelo *ne bis in idem* u kaznenom zakonodavstvu Republike Srbije In: Bejatović S., Novaković N. (ed.), *Načelo ne bis in idem i pravna sigurnost građana (međunarodni pravni standardi, regionalna zakonodavstva i iskustva u primeni*. Belgrade, 83).

⁵⁷ Here, we are talking about the indictment proposal, considering that for the offense under Article 269 of the Criminal Code, due to the prescribed penalty, a summary procedure is conducted. This would imply that in similar situations involving criminal offenses addressed through regular criminal procedures, a ruling to dismiss the indictment would be made.

⁵⁸ Also in: Škulić, M. (2022). Načelo *ne bis in idem* u kaznenom zakonodavstvu Republike Srbije In: Bejatović, S., Novaković, N. (eds.), *Načelo ne bis in idem i pravna sigurnost građana (međunarodni pravni standardi, regionalna zakonodavstva i iskustva u primeni*. Belgrade, pp. 89–90. Bajović, V. (2016). Slučaj Milenković – *ne bis in idem* u krivičnom i prekršajnom postupku In: Ignjatović, Đ. (ed.) *Kaznena reakcija u Srbiji – Part VI*. Belgrade, University of Belgrade, Faculty of Law, 243–258.

CONCLUSION

Although the Criminal Code of the Republic of Serbia outlines several criminal offenses that can sanction the illegal trade of wild animals, this regulation falls short both from the perspective of animal protection and in terms of aligning the legislation with EU laws and regulations.

The EU Directive 2024/1203 mandates that the illegal killing, destruction, possession, trade, import, and export of protected animal species be classified as distinct criminal offenses and sanctioned as such, with a minimum penalty of three years in prison. All of these behaviors are currently addressed under the Nature Protection Law, which proves to be a flawed and inadequate solution, as it allows for the initiation of a misdemeanor procedure and the imposition of fines, thereby allowing perpetrators to evade true criminal accountability. This isn't an isolated case. Numerous offenses under the Animal Welfare Law overlap with the criminal offense of animal abuse outlined in Article 269 of the Criminal Code, and the same issue arises with the offenses outlined in the Law on Nature Protection. Meanwhile, the Criminal Code classifies these behaviors under various offenses, some of which, such as smuggling or illegal trade, aim to protect entirely different legal interests, lacking any real connection to environmental or animal protection. Moreover, animals, as living, sentient beings, should not be treated as objects or classified as "goods". For instance, illegal trade, regulated under Article 235 of the Criminal Code, is an inadequate classification for penalizing the trading of wild animal species. Animals cannot be treated as mere "goods," and perpetrators typically acquire them by committing a criminal offense, unless they were legally purchased in a country where such trade is permitted. Furthermore, the legislation raises another significant issue: What happens to confiscated animals, given that Article 235, paragraph 5 mandates the seizure of all goods and items involved in illegal trade? Moreover, this offense is primarily intended to protect trade as an economic activity and, by extension, the state budget. In contrast, the trade of wild animal species is, first and foremost, an environmental crime – an infringement against nature rather than a violation of commercial regulations.

The lack of alignment with the Directive is also evident in the outlined penalties. While the Directive requires member states to enforce a minimum prison sentence of three years for such offenses, Serbian law predominantly subjects offenders to fines through misdemeanor proceedings or significantly milder prison sentences in criminal proceedings, usually with a maximum sentence of up to three years, which is rarely, if ever, enforced in practice for these crimes.

Aligning with the EU Directive would require defining and establishing a separate criminal offense pertaining to the unlawful killing, destruction, possession, sale, offering for sale, purchase, export, or import of protected animal species into Serbia, recognizing that Article 265, paragraph 3 of the Criminal Code fails to encompass all of the acts listed above. Such an offense should carry a minimum prison sentence of three years, and a more lenient, mitigated form of the offense should be introduced for cases involving non-protected animal species.

From a statistical standpoint, despite rising pollution levels, deteriorating air quality, and high-profile cases of environmental crime and cruelty toward animals, the tally of individuals charged and convicted for crimes against the environment continues to decline. For example, in 2013, 1,039 individuals were charged with such offenses. However, this figure has steadily dropped year after year, plummeting to just 389 individuals by 2022 (the Republic Statistical Office). It is important to clarify that this downward trend should not be attributed to a decrease in actual offenses committed but rather to difficulties in detecting and prosecuting these crimes.⁵⁹

The EU Directive mandates that member states take the necessary measures to ensure that effective and proportionate investigative tools are available for all criminal offenses it encompasses, such as those used in combating organized crime and other serious offenses (Article 13). Under Serbian law, this method is not feasible since environmental crimes are not recognized as offenses that permit the use of special investigative measures, except when committed by organized criminal groups. The scenario grows even more dire when such acts are merely classified as misdemeanors. In such situations, even the Prosecutor's Office for High-Tech Crime lacks the legal basis to act in order to, for example, identify individuals operating social media accounts that advertise or sell various wild animals. This provides yet another rationale for establishing a distinct criminal offense that encompasses these actions and is incorporated into the "list" of offenses outlined in Article 162 of the Criminal Procedure Code, which allows for the use of special investigative measures.

Ultimately, ensuring the humane treatment of animals must be a legal imperative, not just to harmonize domestic laws with EU regulations but, above all, to protect animals themselves. Like humans, animals breathe, eat, give birth, care for their offspring, and experience emotions such as love, fear, and suffering. Since only humans can act in accordance with legal frameworks,

⁵⁹ The difficulties in detecting and proving environmental criminal offenses certainly point to the necessity of specialization within the police, prosecutors' offices, and courts for this type of crime. For more, see: Miljuš, I. (2023). Specijalizacija nosilaca pravosudnih funkcija i svest građana kao instrument suprotstavljanja ekološkim kaznenim delima. *Glasnik of the Bar Association of Vojvodina*, No. 4/2023, pp. 1319–1341.

such laws are vital, not merely to protect the feelings of those empathetic to animal distress but also to protect those who are apprehensive about animals or fear them and even serve the interests of those who consume animal products, like dairy or meat. Effectively detecting and prosecuting crimes against wild animal species is crucial, not only for the protection of these species but also for preserving ecosystems and public health by preventing zoonotic diseases. Advocating for responsible pet ownership and enforcing stringent penalties for pet abandonment is undoubtedly the only way to reduce the number of stray dogs on the streets and, consequently, the incidence of “bites and attacks.” Ensuring adequate living conditions and proper nutrition for cows directly affects the quality of the milk they produce. Furthermore, humanely ending the life of an animal raised for food through stunning and minimizing unnecessary suffering should be seen as a moral responsibility toward a fellow living creature that, just like us, feels, fears, and suffers.

However, inadequate legal frameworks, coupled with the “indifference” and “apathy” of authorities toward investigating and resolving these crimes and the lenient penalties handed down to offenders, only reinforce the notion that issues such as ecology, environmental protection, and animal welfare are seen as priorities reserved for “wealthier and more developed societies.” Meanwhile, poorer and more “rural” communities tend to focus on ethnic, national, and religious conflicts, as well as “correcting historical injustices.” Nonetheless, it’s crucial to remember that cruelty toward animals ultimately mirrors and punishes cruelty within humans. By providing effective legal protection to animals, the law indirectly protects humans, too, particularly from the most brutal and merciless creature of all: another human.

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