EFFICACY OF LAW IN THEORY AND PRACTICE: THE EFFECTIVENESS OF THE ADJUDICATION

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Abstract

The efficacy of the law is a crucial topic in legal theory and legal practice. The theoretical problem relates to different understandings of the concept of the efficacy, and this research addresses specifically the meaning of that concept as the application of the law in adjudication. A more detailed analysis of this term is further developed into a theoretical framework that can serve to explore the adjudicative effectiveness in particular positive legal systems. Among the various elements that fall under the underlying concept of adjudicative efficacy, this article will pay specific attention to the issue of the effectiveness of the initiation of adjudicative proceedings. The first practical problem refers to the question how the (in)effectiveness of the adjudicative application of the law in various elements of this concept, and in particular regarding the aspect of initiating adjudicative proceedings, affects economic and political relations in the political community. The second practical problem is how to improve the efficiency of the initiating of adjudicative procedures to achieve the effectiveness of the law and thus the specific economic and political goals. Based on the theoretical framework and the answers to practical questions in this research we will look at the issue of the efficiency of the initiation of adjudicative proceedings in the Republic of Croatia.

Keywords: *adjudication, efficacy, initiation of adjudicative procedures, legal theory*

JEL Classification: K00, K20

1. INTRODUCTION

The efficacy of the law is one of the fundamental concepts in the theory of law, and its importance for the understanding of practical legal issues can be recognized in public policies of states and supranational associations. The approach to the term 'efficacy of the law' in this paper is one of the possible approaches presented in Alf Ross's theory, i.e. understanding this concept as the effectiveness of the law before courts. This understanding of the term refers to different elements necessary for the effectiveness of adjudication, and one of such elements is the central topic of this paper. It relates to the effectiveness of the initiation of adjudicative proceedings. After the conceptual analysis, two practical issues related to the effectiveness of adjudication will be covered: its importance for political and economic goals and measures through which it can be increased. Finally, the focus will be directed on the efficiency of the initiation of adjudicative proceedings in the Republic of Croatia indicating some areas for possible further research. This research will be conducted on the basis of conceptual analysis of the law and using reports that point to practitioners' discourse in this issue.

2. THE CONCEPT OF MATERIAL EFFECTIVENESS OF THE LAW AS THE APPLICATION OF THE LAW IN ADJUDICATION

In the theory of law, the efficacy of the law can be defined in several ways. The law can be considered effective a) when it contains norms on the creation and application of the law under the assumption, without further determination of the realization of this assumption, that such norms are actually implemented by the bodies whose decisions are adhered to by the citizens; b) when citizens apply the law in reality, because it is present in their consciousness; c) when the law is applied by the law-applying bodies, primarily judges, because it is present in their consciousness.

When the law is viewed as a normative system, we can discuss formal effectiveness of the law. The state of the system of norms created when this system introduces secondary norms authorizing someone for adjudication can be called 'formal effectiveness of the law'. This, however, does not mean that the system of norms is indeed effectively applied in society, and it can, in fact, remain just

the law in books. Building on formal effectiveness with regard to the system of norms, the effectiveness of the law expressed in real life will be referred to as material effectiveness and it is the topic of this paper which is the basis for further elaboration.

Given that the sociological-psychological approach explores what happens in people's real lives, according to this theoretical approach, to understand the law, it is not enough to establish the existence of legal norms through the fulfillment of the formal criteria for the membership of norms to the legal system; it is rather necessary to establish whether this system of norms is applied in real life. What are the social facts that, as a legal phenomenon, form another realistic side of legal norms? Ross considers them to be court decisions and that the effectiveness of the law, which he equalizes with the validity of the law, should be sought in adjudication itself (Ross, 2004, p. 35). Therefore, in order to discuss (materially) effective law, legal norms should be indeed used by judges in the same way they exist in their consciousness. They exist in the judges' consciousness when they feel them to be socially obligatory and therefore comply with them (Ross, 2004, p. 35). "To realistic view, the validity of the law is in the last resort a manifestation of certain socio-psychological facts. For the genesis and development of these, however, the regular 'enforcement' by the courts of law is of decisive importance […] (Ross, 2006, p. 80) Is the existence of legal norms in citizens' consciousness necessary for material effectiveness of the law? Ross defines 'law in action in a broader sense', in the way that it includes court acts and legal acts of private persons in legal relations. However, the 'law in action in the narrower sense' – such as the application of the law in courts – is the only decisive social fact for determining the validity of legal norms in the society. "The effectiveness which conditions the validity of norms can, therefore, be sought solely in the judicial application of the law, and not in the law in action among private persons" (Ross, 2004, p. 35)

Ross, therefore, defines the effectiveness of the law only as the effectiveness of the court in making decisions on the law, while the behavior of individuals in the society is irrelevant for his understanding of the effectiveness of the law. "It makes no difference whether the people comply with or frequently ignore the prohibition. This indifference results in the apparent paradox that the more effectively a rule complies in the extrajudicial legal life, the more difficult it is to ascertain whether the rule possesses the validity because the courts have that much less opportunity to manifest their reaction." (Ross, 2004, 36) The impor-

tance of adjudication for the effectiveness of the law was similarly highlighted by John Chipman Gray. Gray is aware that there can be cases when citizens act in compliance with the rules, not because of court rulings, but because of their moral considerations. Also, an individual can adjust his/her behavior due to the execution of force by an administrative body. "But in all such cases, the rules are Law because, in the ultimate resort, judges will apply them […]" (Gray, 1909, p. 102). For Gray, even if the persons do not follow court decisions, they still remain the law. Also, the rule on a behavior ban becomes the law only when courts deliver a judgment in a case (Gray, 1909, p. 102). According to Gray, it is not important for law whether the members of the society comply with court decisions because the law is what the courts lay it down to be.

Although there are objections to realistic theories that emphasize this crucial role of courts for the concept of law, the hypothesis on the primacy of adjudication for the effectiveness of the law points to two important insights. Firstly, court decisions are necessary to determine the content of the law in a particular society. Such a hypothesis does not necessarily contradict the hypothesis on the existence of citizens' legal consciousness of the law; different emphasis has been placed on each of these two hypotheses. In the process of determining 'material effectiveness in a narrower sense', the emphasis is on the determination of the content of the law in the consciousness of the judges, while in matters of material effectiveness in a broader sense, the emphasis is on how the law affects the consciousness of individuals. Why is the law in the consciousness of judges necessary to determine the contents of the law?

Unlike individuals in a society, only institutions – whose legal authority is recognized in society – can authoritatively determine the contents of the law. In this process, while the legislator can in her consciousness define abstract legal provisions for regulating the interests in a society, only judges can determine the exact meaning of such a behavioral regulation on specific interests in the society. Since members of the society cannot know all their rights and obligations, nor the rights and obligations of other members of the society, courts are necessary for the effective application of the law. "If every member of the State knew perfectly his own rights and duties, and the rights and duties of everybody else, the State would need no judicial organs; administrative organs would suffice. But there is no such universal knowledge. To determine, in actual life, what are the rights and duties of the State and of its citizens, the State needs and establishes judicial organs, the judges. To determine rights and duties, the judge

settles what facts exist, and also lay down rules according to which they deduce legal consequences from facts. These rules are the Law" (Gray, 1909, p. 101).

Indeed, from the viewpoint of law beneficiaries, court decisions are very important for knowing what the law is, in the sense of adjusting our behavior to the norms adopted by the court or those expected to be adopted. "If anyone asks what in regard to a given matter is valid law, at the present moment he undoubtedly wants to know how current disputes will be decided if they are brought before the courts" (Ross, 2004, p. 40). "When a client asks his solicitor what is 'the law' in a certain situation, the practical import of this question is how legal proceedings, if instituted, will be judged by the courts" (Ross, 2006, p. 80). Moreover, if the court does not deliver judgments, it is difficult to know what the law in real life really is. As pointed out by Ross, court decisions are the pulse of legal life (Ross, 2006, p. 80).

Another insight, originating from the hypothesis on the primacy of adjudication for the effectiveness of the law, refers to specific demands placed upon the community to ensure the effective functioning of adjudication.

3. THE EFFECTIVENESS OF ADJUDICATION

Research of the effectiveness of adjudication is an integral part of the sociological-psychological theory of law. These theories attempt to empirically examine the impact of the law on the society and the operation of judicial institutions fits into the basic subject of their research. Thus, for example, as part of the sociological jurisprudence programme, Roscoe Pound, among other things, also explained the importance of studying the real social effects of legal institutions and the ways which would make legal standards for the behaviour of individuals more effective in real life (Pound, 2000a, pp. 350-358). Similarly, speaking of the 'law and society' academic movement, Brian Tamanaha points out questions of interest to this school in studying the relationship between legal institutions and the social context (Tamanaha, 2010, p. 371). Some issues relate to the actions within the legal institutions, and others to how the actions of legal institutions relate to the social environment in which they operate (Tamanaha, 2010, p. 372). When studying the institution-society relationship, Tamanaha states that there are issues such as: "Do legal actors indeed enforce stated legal norms?" "Who invokes the legal apparatus and why?" "Whose interests are served by the actions of legal institutions?" "How do people in society react to

the actions of legal institutions?". Tamanaha's research topics are, for example, the following: 1) the gap between the declared norms and what legal officers really do (Tamanaha, 2010, p. 372); 2) the gap between the declared norms and norms followed in social life; thus, the focus of the research is more on social behavior than the norms declared or carried out by official legal bodies (Tamanaha, 2010, p. 373); 3) the gap between real behaviour and the general image of the law (Tamanaha, 2010, p. 374); 4) why individuals in the society are not willing to turn to legal institutions (Tamanaha, 2010, p. 373).

If we single out only the topics related to the effectiveness of adjudication from the area of social-psychological theories of law, then the theory of law in the context of understanding the law itself can point to an understanding of the conceptual apparatus necessary for a study of the effectiveness of adjudication. In this context, it is important for the effectiveness of adjudication that the courts have the capacity to effectively carry out their decision-making function, which sets the requirements for the study of elements necessary to perform such a function, such as material working conditions of judges, appropriate organization of court work, and professional qualities of judges. In addition, for example, court decisions must be published – publicly declared and harmonized. It is also fair to mention the importance of witness and victim participation in the proceedings and, in general, the importance of securing evidence before the court.

On the other hand, for the effectiveness of adjudication, the efficiency of courts alone is insufficient. It is equally important for the effectiveness of the initiation of adjudicative proceedings. There are two main types of adjudication which can be differentiated based on the empowerment for initiation of the adjudicative proceedings. The first one is adjudication which is initiated only when both parties agree to resolve the dispute before the court. The second one can be named the 'adjudication on demand'. The term is coined based on the Dworkin' s concept of legal rights defined as rights "enforceable on demand in an adjudicative political institution such as a court." (Dworkin, 2011, p. 404). The members of the community are entitled to enforce legal rights in the adjudicative institution on demand without further legislative intervention (Dworkin, 2011, p. 406). Besides the members of the community, in some cases, legal systems empower official organs to unilaterally initiate proceedings for the protection of individual rights and collective interest.

The ideal model of the adjudication on demand satisfies all formal and substantive conditions required for the initiation of adjudicative proceeding whenever the protection of legal rights and collective interest is needed according to the officially proclaimed values or the existing needs in the community regulated by law. In reality, there is a gap between the ideal model of the adjudication on demand and the existing situation of the initiation of the adjudication proceedings.

4. EFFECTIVENESS RELATED TO THE INITIATION OF ADJUDICATIVE PROCEEDINGS

Three groups of problems can be detected as the source of the gap between the ideal and existing model of the adjudication on demand with regards to the initiation of the adjudicative procedure: 1) organs or citizens do not recognize the need for proceedings; 2) there is a need for proceedings, but there are limitations in the society that discourage the citizens from initiating proceedings; 3) there is a need for proceedings, but the authorities do not initiate them.

(1) Firstly, it is possible that court proceedings are not initiated because there is no need for them in the community. Although such a situation does not really question the effectiveness of adjudication, it still remains questionable what the law according to which individuals can direct their behavior really is, regardless of whether they agree with such a law or not. These situations are possible, especially in cases when new legal institutes are still not supported by the community but are nevertheless transplanted into the community. The extreme example is provided by Brian Tamanaha to describe the situation when citizens carry on with life on the basis of a normative order wholly different from that of the state (Tamanaha, 2001, p. 145). It is also possible that some legal regulations have no direct connection with citizens' attitudes of interest or lack that interest; or that citizens cannot recognize such a connection although it exists, and habitually accept other normative arrangements outside of the law. In this case, cultural consciousness affecting the consciousness of the law comes into focus (Ross, 2004, p. 376).

The other way around, the community can officially proclaim some values while at the same time organs do not establish the practice which realizes these values in the community life. Sometimes the existing community practice opposite to the practice proclaimed as the value can corrupt or contaminate, if not

the whole law, at least some of its segments to the level that it cannot be considered as law at all (MacCormick, 2007, p. 271).

(2) Another situation is when citizens recognize a need for adjudicative proceedings, but they refuse to initiate them. There are two different cases here. In the first case, it is a situation in which there are no external obstacles for citizens to initiate proceedings, but they avoid them due to internal attitudes of no interest in adjudication. Another reason for the inefficiency of initiating the proceedings may arise if the individuals cannot initiate proceedings although they wish to do so for reasons of external limitations. These two reasons can be recognized in some authors' theories of law. The importance of citizens' motivation for the initiation of court proceedings takes a special place in Jhering's theory of law. He pointed out that the law is implemented in reality if public officers perform their duties and individuals protect their rights.

„The existence of all the principles of public law depends on the fidelity of public officials in the performance of their duties; that of the principle of private law, on the power of the motives which induce the person whose rights have been violated to defend them: his interest and his sentiment of legal right. If these motives do not come into play, if the feeling of legal right is blunted and weak, and interest not powerful enough to overcome the disinclination to entering into a controversy and the indisposition to go to law, the consequence is that the principle of law involved finds no application" (Jhering, 1915, p.72).

According to Jhering, the work of the state bodies is a minor problem, because it is their duty to initiate proceedings. "[W]hile the realization in practice of public law and of criminal law is assured, because it is imposed as a duty on public officials, the realization in practice of private law is presented to individuals under the form of their legal rights; that is, it is left exclusively to them to take the initiative in its realization, left exclusively to their action" (Jhering, 1915, p. 71). It is much more important that individuals fight for their subjective rights and initiate proceedings, which is their duty to themselves, but also their social duty (Jhering, 1915, p. 69;70). Jhering correctly pointed out how important it is for the individuals to protect their subjective rights before the court. However, Pound noticed serious limitations regarding the level of interest of individuals to highlight their rights and protect them in court. According to Pound, the reasons for individuals' inactivity may be material in nature, because citizens lack the means to cover court costs or simply do not want to spend their time.

"Jhering urged the duty of the good citizen to go to trouble and expense to vindicate his legal rights, even on small occasions, as his contribution to maintaining the legal order. But in the busy world of today men are less and less inclined to pursue their legal rights even in matters of no little moment at the expense of time, money, and energy, they can more profitably employ in their everyday work. Hence, we have to deal in new ways with the subject of making legal precepts effective. We must study the limits of effective legal action. We must determine what we may expect to go through law and what we should leave to other agencies of social control. We must examine our armory of legal weapons, appraise the value of each for the tasks of today, and ask what new ones may be devised and what we may expect reasonably to accomplish by them when devised. There is a serious limitation upon the possibility of social progress through law" (Pound, 2000b, p. 372).

As a follow-up to Jhering and Pound's insights, one can point out other external reasons for inactivity of individuals in the protection of their rights before the court. The reasons can be found in the fact that citizens are insufficiently informed of the law, and therefore do not know how to initiate a proceeding. Limitations can also be of political nature, e. g. if the citizens feel threatened to take part in the proceedings or if they do not believe in the independence of judicial institutions.

(3) As a follow-up to the first two cases – the lack of interest for court proceedings and the absence of civil initiative – the third, much harder case is when court proceedings are not initiated because the official bodies authorized for the initiation of adjudicature – the police, state attorney's office, examining magistrate – do not process the cases for which the adjudication proceeding should be initiated. Ross pointed out that the term 'court' is used in its broad sense to include all authorities administering criminal prosecution: the police, the state prosecution, and the court. "If the police regularly omit to investigate certain breaches of the law, or if the prosecuting authority regularly omits to bring a prosecution, the penal law loses its character of valid law, notwithstanding its application at rare intervals in the courts" (Ross, 2004, p. 35; in note 1) Considering the fact that the state attorney's office has the power to initiate certain procedures when the law is violated, their inefficiency may jeopardise the application of the law where there really is a need to concretize the regulation of some social relationships. This is why it is important from the aspect of material effectiveness that, if there are any third bodies for the official initiation of the

proceedings on behalf of the community such as for example state attorney's office, additional requirements necessary for this body on which the initiation of adjudication proceeding depends are fulfilled so that it can function effectively. Such requirements may relate, for instance, to legal, political, and material conditions that have to be such that the state attorney's office can function effectively.

A precondition for the fulfillment of the requirements of material and political efficiency – of both official bodies and private persons – is, naturally, an adequate normative solution that regulates the power and obligation to initiate a proceeding. From the legal theory aspect, these norms can be recognized as the special sort of the power-conferring norms. Effectiveness in this sense requires the authorization of as many entities as possible for the initiation of proceedings. In cases where a particular authority is authorized to initiate a proceeding, especially in societies where this is the only option, control is required of the interested parties in the decision to initiate proceedings by this body and that this body bases its decision on the initiation of the proceedings on the law.

International law is facing the same challenges regarding the effectiveness of the initiation of adjudicative proceedings. The effectiveness of the European Commission, which can initiate adjudicative proceedings alongside the individuals and the states themselves with the procedures of consultation and conciliation that may precede the initiation of the court proceedings, certainly had an impact on the level of adoption of European legislative standards in the conduct of states and individuals. On the other hand, difficulties related to the initiation of proceedings before the International Court of Justice, before which, except in certain limited circumstances, one state cannot initiate a proceeding without the consent of the opposing state, challenge the effectiveness of international law. It is worth to mention the legal regulation for seeking the legal opinion of the International Court of Justice according to which only certain bodies may request the opinion of the court, among which the UN General Assembly. A state's success in winning the support of other member states of the UN General Assembly depending on the majority vote in the Assembly to initiate the procedure of seeking a legal opinion of the International Court of Justice surely depends on many 'non-legal conditions'.

5. THE RELATIONSHIP OF THE EFFECTIVENESS OF ADJUDICATION AND ECONOMIC AND POLITICAL RELATIONS

In political and economic discourse, the effectiveness of adjudication is often referred to as one of the fundamental goals of a successful political community model. One of the fundamental conditions for the accession of countries to some international or transnational associations is the effectiveness of adjudication. A special negotiation chapter that the countries have to fulfill to become member states of the European Union refers to adjudication in particular. The Council of Europe body, the European Commission for the Efficiency of Justice (for example CEPEJ, 2016), measure and compare the situation in the justice systems of its member states. The Organization for Economic- Cooperation and Development reports (for example OECD, 2013) and the World Bank reports (for example Word Bank, 2010) covers the situation in the justice systems in different countries.

The interest in the adjudication of supranational organizations can be explained as follows. As noticed by scholars of the European integration, this process has made national citizenship less parochial and more universalistic by limiting what national governments can award or deny, not just to the citizens of other European countries (Streck, 1997). We can add to this insight that it is not only the avoidance of the discrimination between the citizens of the different states which are members of the same inter-states association that are forbidden, but the national systems have to increase the capacities so to provide equal conditions for the citizens of the association in all state members. The transnational integration, in both versions of unity or community vision, rejects the classical model of international law which celebrates state sovereignty and it provides neutral, more or less limited, an arena for states to prosecute their own goals (Weiler, 1991, p. 2479). Depending on the kind of integration, economic or social-political, the intensity of some integrative factors could be different but they are always potential factors for realization as the result of transnational human intercourse. How do these integrative factors influence the effectiveness of the adjudication?

On the one hand, state-members in supranational associations demand that their citizens have an equal and effective opportunity to protect their rights, regardless of where they are located within the association of countries. We

can say that in the context of political integration, effective adjudication contributes to the conviction of citizens: a) that community members have equal chances of realizing their personal choices without the interference of arbitrary decisions; b) that subordination of citizens to the community empowered to legitimately use force against its members, is not perceived as a 'robbers act', but as a result of cooperation of community members; c) and that the community seeks to preserve the integrity of individuals and the community. On the other hand, effective adjudication enables the citizens who appear as economic agents that, regardless of the state in which they perform economic activities, they can perform these business activities in an equal, predictable and competitive way, which is guaranteed by effective adjudication. This is the result of economic integration.

Based on the introductory considerations of theories on effectiveness, the legal-theoretical aspect should also be added to the political and economic aspect of studying the importance of adjudication effectiveness. Namely, if we accept the view that without court proceedings, we cannot reliably claim what community law really is (Ross. 2004) and that without court decisions there may be discrepancies between the official understanding of the law and the law that is really valid in the community, adjudication effectiveness also becomes an essential element for the concept of the law. This insight is not only theoretical but also reflects the political and economic aspect of the consideration of the law. Namely, without law before the courts, it may occur that official description of the law loses touch with reality and that the gap between upholding institutions and political morality of the citizens in relation to what this law produces is such that it endangers the proclaimed political and economic models of the functioning of the community. From this aspect, the effectiveness of initiating proceedings is the key element for both the effectiveness of adjudication and the political and economic goals of the community.

There are elaborated models in the professional discourse on how the effectiveness of adjudication can be achieved. For the purpose of this paper, we will outline the model that has been developed through the process of countries' accession to the European Union through the fulfillment of the requirements from Chapter 23, Judiciary and Fundamental Rights, for the part relating to the effectiveness of adjudication. The progress reports of the EU accession countries alone cannot provide full insight into the measures that need to be fulfilled, but the reports should rather be viewed in the context of projects financed from

the EU funds in order to meet the requirements of Chapter 23. Based on this analysis (for example UNDP, 2012), it is possible to summarise that the model includes the following elements: strategic management of adjudication and project management of reforms, the system of appointments and promotions in judicial sector and the implementation of disciplinary actions, judicial training systems, rationalisation of the network of courts and state attorney's offices, organisation of processes in courts and state attorney's offices, infrastructure and equipment, enforcement of court decisions, judicial inspection, alternative dispute resolution, court proceedings and file management, court organisation and court services management, probation service, prison infrastructure and living conditions in prisons, court jurisdiction in administrative matters, and free legal assistance. In such a model, there is an element that relates to the effectiveness of the initiation of adjudication. It is the element of the accessibility of adjudication to citizens which concept is unfortunately reduced to measures of free legal assistance. Although the possibility to initiate the proceedings is recognized as an important element, it is evident from the previous chapter that free legal assistance is not the only element important for the initiation of proceedings and effectiveness of adjudication.

6. EFFICIENCY OF INITIATING PROCEEDINGS IN THE REPUBLIC OF CROATIA

As previously stated, the effectiveness of initiating proceedings can be considered from the following aspects of the gap between the ideal and existing model of the adjudication on demand: a) the unconsciousness of the existence of real needs of the citizens and the community organs to initiate proceedings; b) the existence of social internal and external barriers to initiating proceedings for the citizens who could protect their interests; c) the existence of obstacles for the institutions to officially initiate proceedings, although there are needs for their initiation.

Regarding the first aspect, it is possible that the law provides a regulation aiming to achieve certain officially published values, but that community members simply do not perceive such normative regulations as relevant for their lives. For example, what is the awareness in the Republic of Croatia of the understanding of certain manifestations in the community such as corruption, degrading treatment, mobbing, discrimination, or abuse of power? According to

the study of discrimination in the Republic of Croatia, 1/5 of the respondents are not familiar with the concept of discrimination (Ombudsman, Center for Peace Studies, 2017).

Another aspect of the effectiveness of initiating adjudicative proceedings relates to internal attitudes towards the initiation of court proceedings and external obstacles that prevent citizens from initiating proceedings, although they might wish to do so. On the one hand, there are factors that can contribute to the negative attitude towards the initiation of proceedings, although citizens believe that there are social needs for the initiation. One of the reasons may be distrust of citizens in judicial institutions. According to a survey of the perception of entrepreneurs on judicial independence, Croatia is ranked 120th of 140 countries (World Economic Forum, 2015).

On the other hand, there are factors that can be external obstacles for imitating the court proceedings. One of the important preconditions for the initiation of proceedings by the citizens is financial resources. As stated before, Croatia participates in the measuring of the effectiveness of adjudication including the free legal assistance system. For example, in 2016, among forty-one analyzed countries, the Republic of Croatia was 18th according to the budget spent on free legal assistance per capita. In comparison with the average funds spent for free legal assistance per capita that amounts to 6,5 EUR, with 2,6 EUR per capita, Croatia is in the mid-range group of countries (CEEPEJ, 2018, p. 78). The statistical data on the free legal assistance can be interpreted by someone as the Croatian system being in accordance to the European trends, but also used by others to require the more efficient free legal aid system. More important is to notice that, as mentioned before, this data refer only to one segment of the whole picture on the effectiveness of the initiation of adjudication proceedings.

Also, lack of proceedings may be conditioned by specific forms of pressure in areas and situations that are considered risky for pressure on individual autonomy, such as, for example, in the prison system. Based on several cases in which problems were reported in the filing of complaints by prisoners, the CPT recommended to the authorities of the Republic of Croatia to provide all prisoners with confidentiality in filing a complaint and to examine any threats to prisoners for filing a complaint (CPT, 2014, p. 45) Such complaints can have an impact on the initiation of the proceedings for the protection of prisoners' rights.

The third aspect refers to obstacles faced by the very institutions that initiate proceedings. There is no doubt that human and material resources are one of the important preconditions for the institutions to initiate proceedings. Insufficient capacities, which may include insufficient expert knowledge to process complex criminal offenses can lead to a situation where such acts are not processed. Based on the data from the Central Bureau of Statistics (Central Bureau of Statistics, 2016/2017) we can make some insights regarding the crimes committed against the economy. In the period from 2016 to 2017, only one person was sentenced to more than five years in prison, nine persons were sentenced to three to five years in prison, 24 persons to two to three years in prison, 123 persons to 1 to 2 years in prison, and 1128 perpetrators to a prison sentence of up to one year, most of whom got a suspended sentence. These statistical data point to a small number of verdicts for the most serious violations of economic law considering the pronounced sentences, and there are no verdicts whatsoever in this period for some criminal offenses such as money laundering. Such a situation can also be caused by the inefficiency of initiating court proceedings for such, most serious crimes. This assumption, of course, need not necessarily be correct, but it points to the importance of additional investigation of the situation and causes of initiation of criminal proceedings.

Moreover, the effectiveness of investigation is one of the standards according to which the European Court of Human Rights decides on violations of citizens' rights. Violation of this standard may also indicate a lack of institutional capacity to conduct effective investigations, which may have a negative impact on the initiation of the proceedings. By 2014, the European Court of Human Rights issued 13 decisions against the Republic of Croatia in which it found a violation of principles of effective investigation with regard to only two types of violations prescribed by the European Convention on Human Rights (Turković, Omejec, 2016. p. 2016). One of the examples of the problem can be the case of D.J. v. Croatia. (ECtHR, 2010).

The victims and witness support can also influence the effectiveness of the initiation of adjudication. The assessment of the witness and victims' support system in 2007 (Turković et al., 2007) detected some severe shortcomings in providing assistance to victims through the criminal proceeding. Although serious progress has been made since then, the assessment of the same quality is missing to describe the current situation.

A special area of research may also be the discretion of authorities to decide on the initiation and conduct of proceedings. Although this discretion is necessary for effective adjudication, there is a question of effective monitoring of such discretion (Davis, 2007).

7. CONCLUSION

This paper outlines the theoretical concept of the effectiveness of the law by focusing on one of the understandings of this term. It is the understanding of the effectiveness of the law as the effectiveness of adjudication. One of the key elements for such an understanding of effectiveness is the effectiveness of initiating adjudicative proceedings. Without such an element, there are no court proceedings, and without court proceedings, we do not know what is the real community law. Three groups of problems can be recognized as the source of the gap between the ideal and existing model of the adjudication on demand regarding the initiation of the adjudicative procedures.

Afterward, we focused on practical issues: to what extent is the effectiveness of adjudication important for economic and political relations and how it can increase the effectiveness of adjudication. The answers to these questions are based on the reports of supranational associations that show interest in the effectiveness of adjudication in all member states. It has been pointed out that measuring the element of the effectiveness of initiating adjudicative proceedings is often oriented to free legal assistance, while a comprehensive analysis would also require the inclusion of other elements.

Finally, we have highlighted some areas that might be interesting for the studies of the effectiveness of initiating adjudicative proceedings in the Republic of Croatia. The areas are systematized under the three groups of issues outlined in the theoretical framework. Based on the analysis in the sixth chapter, we can mention several hypotheses for further researches and initial suggestions for legislative and institutional changes. Firstly, in some areas of the Croatian law, public and official legal consciousness cannot recognize the connection between existing legal norms and needs the law should serve according to the Croatian culture. This problem could be addressed by the normative and non-normative influence on the openness of the communication channels for the public debate and presentation of relevant experiences, as well as for strengthening the strategic litigation. Secondly, internal and external obstacles exist in the Croatian

legal system for citizens when initiating the proceedings. The negative attitude towards the judiciary makes citizens feel helpless when their rights are endangered. Although the free legal aid was conceptualized in a way to be in line with the European requirements for the EU accession, the model does not meet the needs of disempowered citizens. The problem of the internal obstacles can be improved by a political decision that independent and efficient judiciary presents the core value of the Croatian society. Following this decision, the strategic planning, implementation, and financing of the measures, as well as monitoring of the reforms, should be improved and perceived as equally important as before Croatian accession to EU. The external obstacles can be removed by the development of judicial and extra-judicial services oriented to facilitation od the approach to the administration of justice and to the empowerment of deprived categories of citizens. The supervision of the places where persons are deprived of liberty should be intensified with the aim to ensure equality in using the legal remedies. Thirdly, detection and prosecution of the breach of law do not respond to some deviations in the society. The normative and institutional influence should be aimed at increasing the independence and efficiency of police and state prosecutor's office with the adequate civil and parliament supervision of the correspondence between social trends and track records of successful prosecutions. The professional standards of the effective investigation, as well as prosecutor's discretion, should be developed and monitored. One of the concrete measures for improvement of the effective investigation is the finalization of the establishment of the victims-witness support system.

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