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UDC: 342.72/.73:340.13
316.74:34

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ПРАВНА КРИЗА И ЧОВЕКОВИ ПРАВА

LEGAL CRISIS AND HUMAN RIGHTS

Abstract

Although the topic - legal crisis and human rights - may seem, at first glance, a straightforward issue, it is, in fact, far from simple. It involves two highly complex sets of questions. The first set pertains to the legal crisis as a social phenomenon. The second, equally significant, concerns the realisation vis a vis non-realisation of human rights in cases of the existence of legal crisis. The unravelling and resolution of the second set of questions should, in other words, provide an answer to the key issue.

For the realisation, or more precisely, the fulfilment of human rights, it is essential that law function properly and that it holds its rightful place in society. In other words, the law should not be abused, nor should its application be hindered in any way. If this second scenario occurs - the law comes into crisis. When the law is in crisis, the consequence can be, and often is, that the law is replaced by injustice.

The paper on the topic-legal crisis and human rights - aims to provide a comprehensive and coherent analysis by addressing the following key issues: firstly, the importance of law in regulating social relations; second, the concept of crisis, with a particular focus on legal crisis; third, the causes, especially the fundamental or the most important, that trigger the crisis; fourth, the impact of the legal crisis on human rights; and fifth, the resolution of the legal crisis as a condition and assumption for the rule of law and the realisation of human rights.

Keywords: *Legal crisis, human rights, law, social relations etc.*

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Introduction

Although the topic – legal crisis and human rights – may seem, at first glance, a straightforward issue, it is, in fact, far from simple. It involves two highly complex sets of questions. The first set pertains to the legal crisis as a social phenomenon. The second, equally significant, concerns the realisation *vis a vis* non-realisation of human rights in cases of the existence of legal crisis. The unravelling and resolution of the second set of questions should, in other words, provide an answer to the key issue. Can we speak about human rights, particularly their realisation, in a society or state where a legal crisis is present?

The term "legal crisis" can also be synonymous with another legal expression – law in crisis. However, as will be elaborated later in this paper, there are other legal and political expressions for the concept of legal crisis.

The first set of questions touches upon the issues related to law and its role in regulating social relations. In this paper, the focus is on law as positive law in a society, as part of social norms. This emphasis is not incidental. Apart from law, understood as a set of legal norms, other social norms regulate social relations in certain spheres of social life. Among the group of social norms in every legal system, moral norms, customary norms, natural law, religious norms, and others hold a special place. Inextricably linked to law and the legal regulation of social relations is the regulation of human rights, as a part of the relations in a specific society – in any society, with a special emphasis committed to democratic governance. When it comes to human rights, they are studied and examined on two levels - first, at the level of their legal regulation, and second, at the level of their realisation and legal protection.

For the realisation, or more precisely, the fulfilment of human rights, it is essential that law function properly and that it holds its rightful place in society. In other words, the law should not be abused, nor should its application be hindered in any way. If this second scenario occurs – the law comes into crisis. When the law is in crisis, the consequence can be, and often is, that the law is replaced by injustice.

Given the above, and when it is about a crisis in which law finds, it is necessary to first clarify the phenomenon of crisis and then identify the causes that lead to a legal crisis. In other words, we must concretely establish the causal links between certain phenomena and actors on the one hand, and the legal crisis as their consequence on the other.

When a legal crisis arises, it brings about specific, often very harmful, consequences for the state itself or a particular society, and subsequently for the citizens. For the citizens, a legal crisis constitutes a direct attack on human rights – using constitutional language, it is an attack on constitutional freedoms and rights.

The emergence of a legal crisis and the consequences that it creates, especially when striving to maintain the legal order and the rule of law (the

legal state), necessitate taking appropriate measures and actions to eliminate the causes that lead to the legal crisis. The ultimate and most important result of these necessary measures should reflect on human freedoms and rights and their realization. Human freedoms and rights are regulated and guaranteed by the constitution of a country. The general rule, both in national law and international law, is that there is no alternative to human freedoms and rights.

Based on the above, the paper on the topic-legal crisis and human rights – aims to provide a comprehensive and coherent analysis by addressing the following key issues: firstly, the importance of law in regulating social relations; second, the concept of crisis, with a particular focus on legal crisis; third, the causes, especially the fundamental or the most important, that trigger the crisis; fourth, the impact of the legal crisis on human rights; and fifth, the resolution of the legal crisis as a condition and assumption for the rule of law and the realisation of human rights.

1. The concept of law and its meaning in regulating social relations

The concept of law is generally defined as a set of mandatory norms to which every individual in a state must adhere. This applies to both natural and legal persons. The state, or more precisely, its governing authority, creates, guarantees, and enforces legal norms. The term "law" itself originates from the Latin term *ius* and the Greek term *dike*.²

Many legal disciplines focus on the study of law as a social phenomenon. At all law faculties, specific legal subjects are introduced to study this phenomenon. Although these subjects may have different names, they are essentially synonymous in content. Some of the possible titles include Introduction to Law, Theory of State and Law, and Introduction to Legal Sciences, among others.

To distinguish law from other social phenomena, several key characteristics, as the most general features, should be highlighted – *grosso modo*. Law is created by the state and sanctioned by it.³ It was emphasised that law is a system of legal norms. These legal norms are enforced externally through state coercion. In this sense, it is referred to as positive law. Positive law is the law that is in force or has legal validity in a particular state. Additionally, in legal science, and with regard to defining the term - positive law, other qualifications are also provided. Positive law is considered as the law that actually exists. In this sense, it is a factual reality, not just a mere ideal.⁴ On this point, Hans Kelsen (a famous legal theorist and normative scholar) is even

² Ljubomir Tadic, (*Политиколошки лексикон*) *Political Lexicon*, Belgrade, 1996, p. 174.

³ Dr. Radomir Lukic, (*О правној држави, Правна држава - порекло и будућност једне идеје*) *On the legal state, Legal state - origin and future of one idea*, Belgrade, 1990, p. 11.

⁴ Dr. Radomir Lukic, (*Систем филозофије права*) *The System of Philosophy of Law*, Belgrade, 1992, p. 325.

more stringent in defining the concept of positive law. He believes that positive law refers only to those legal norms that are sufficiently concrete and actualised to be precisely determined and applied.

Legal norms are part of social norms. Legal norms differ from moral norms, customary norms, religious norms, and other social norms. In the regulation of social relations, moral norms also play an important role alongside other social norms. Morality (*moralis* in Latin, meaning acting morally) refers to the type of behaviour by an individual aimed at fulfilling a moral value or norm. According to the teachings of Immanuel Kant, actions are moral only when there is a conscious desire to fulfil the mandate of the moral law, which he refers to as the "categorical imperative."

Duty comes to the fore in moral behaviour, which is a kind of inner feeling and commitment without external coercion.⁵ From this perspective, the legal norm, unlike the moral norm, is coercive because it mandates enforcement.⁶

Various scholarly views have been expressed about the relationship between law and morality, and it can be said that specific theories and academic disciplines have emerged. In German legal doctrine, particularly among prominent legal scholars like Jhering and Jellinek, it is emphasised that law represents a certain minimum of morality. Law, therefore, must contain at least a minimum of morality. Law without a minimum of morality is not just law.⁷

The presence of morality in law can be observed on three levels. First, moral norms as general principles; second, the moral norm as part of the legal norm; and third, when the legal norm refers to the application of the moral norm.

This brief overview of law and its relationship with morality enables a more detailed analysis of other essential characteristics of law. Law is a social construct. On the other hand, law is an extremely complex entity that falls within the order of regulation. To better understand this social phenomenon, other terms are used, such as the "legal sphere," "jurisphere," and "jurisprudence," composed of several structural elements.⁸

Among the characteristics of law as a social phenomenon, some of which were covered, the most significant one is that it governs the most significant social relations. This leads to the conclusion that law is the most important form of regulating social processes, or shaping social relations.⁹

⁵ Ljubomir Tadic, cited work, p. 145.

⁶ About this relationship between law and morality in the work of Hans Kelsen, (*Чиста теорија права*) *Pure theory of law*, Belgrade, 1998, p. 24.

⁷ Georg Jhering, (*Борба старог за новим правом*) *Struggle of the old for the new law*, Belgrade, 1998, on several pages.

⁸ For the above, Dr. Stevan Vracar, Afterword to the work of Hans Kelsen: (*Главни проблеми теорије државног права*) *Main problems theory of state law*, Belgrade, 2001, p. 584.

⁹ Dr. Stevan Vracar, "(Криза у правној сфери) Crisis in the Legal Spheres", (*Криза правног система*) *Crisis of the Legal System*, Belgrade, 1990, p. 67.

Given the basic topic of this paper, namely the crisis of law and human rights, it is particularly important to emphasise as follows. Human rights in every society, especially in those that opt for democratic governance, are regulated by the positive law of a particular country. Even more specifically. When it comes to human rights and their guarantees, human rights are defined, regulated, and guaranteed by the supreme legal norms enshrined in the constitution of the country. From what has been said above, it is clear that human rights constitute a constitutional matter – *materia constitutionis*. The very fact that they are regulated and guaranteed solely by the constitution of a country gives human rights their significance, that is, their relevance.

For the realisation of human rights, it is not enough for them to be defined and incorporated into constitutional norms. It is necessary, and crucial, that legal means and mechanisms be provided to ensure the realisation of human rights, which is an obligation of every state. For this reason, constitutional law science emphasises that the guarantee and protection of human rights through the use of concrete legal means is more important than merely enshrining them in the Constitution as the highest legal act. This is because constitutional freedoms and rights can be written on paper yet not be realised in practice or be violated without sanction.¹⁰

Among the many factors that have a direct impact on the realisation of human rights is the proper functioning of the law. The functioning of the law implies, among other things, the functioning of state institutions and other organs of the state. From this perspective and criterion, the functioning of the law is always called into question when it is in crisis, which is the phenomenon we will explore further in the continuation of the text.

2. The concept of crisis, with a special focus on the legal crisis

The purpose of this topic is, first, to clarify the general concept of crisis as a social phenomenon; and second, based on the principles underpinning the general crisis, to determine the specific characteristics of the legal crisis.

2.1 The General Concept of Crisis

"Crisis" originates from the Greek word *krisis*, which means decision, trial, or judgment. Terminologically, the concept was transferred from the field of medicine and medical terminology into areas of social sciences such as economics, political economy, law, political science, and others.¹¹

In its original medical sense, a crisis refers to the decisive stage in the process of a disease, where the outcome determines either recovery or death. In essence, a crisis represents a turning point, a critical juncture in a state

¹⁰ Svetomir Skaric, (*Уставно право*) *Constitutional Law*, Skopje, 2015, p. 545 – 562.

¹¹ More specifically, Ljubomir Tadic, cited work, p. 108 – 109.

where the moment of transformation is decisive, leading either to healing or to the natural end of the life of the individual. In other words, in medical terms, it is the decisive stage of a disease process.¹²

In classical theory and according to classical learnings, particularly in classical aesthetics from Aristotle to Hegel, crisis denotes the turning point of a fateful process, which, despite its objectivity, neither transcends nor remains outside of its own identity.¹³

These ideas are embedded in theoretical frameworks characteristic of coherent theories of the 18th and 19th centuries. For instance, the philosopher Rousseau in the 18th century addressed the crisis as the relationship between society and the state. Another thinker, Holbach, wrote to Voltaire in 1776 that "all of Europe is in crisis, which is a favourable phenomenon for the human spirit." This reflects an optimistic view of crisis as a path toward a better situation. Moreover, and concretely, Karl Marx theoretically addressed the concept of an economic system crisis. Marx introduced the concept of crisis into the world of science as a coherent theoretical whole with all the necessary scientific attributes.¹⁴ Discussing crisis, Marx described them as an epidemic of overproduction "and as the power triggered by the epidemic of the labour process". For the sake of the truth, Adam Smith, Ricard, Mill, and others also offered specific views and opinions on crisis.¹⁵

It is also worth noting specific sociological thoughts on crisis. In contemporary sociological theory, multiple interpretations and definitions of the term crisis can be observed. Among them, we can point out: first, crisis signifies the sensitive illegitimacy of a social system; second, crisis represents a process of decision-making within a time constraint; third, crisis involves a turning point in a fateful process; fourth, crisis conditions appear as the disintegration of social institutions.

Among contemporary sociologists and philosophers, we recall the thoughts of Jürgen Habermas.¹⁶ The theoretical concept of crisis is especially known and analysed in the works of this scholar. According to Habermas, a crisis arises when the structure of a social system allows fewer solutions to problems than are necessary to maintain the framework of the system. A crisis takes the form of the disintegration of social structures.¹⁷ In this sense,

¹² Slobodan Perović, "(Криза правног система – Покушај теоретског уопштавања) Crisis of the legal system - An attempt at theoretical generalization", (*Криза правног система*) *Crisis of the legal system*, Belgrade, 1990, p. 7 - 8 and p. 30.

¹³ Slobodan Perović, cited work, *ibid.*

¹⁴ For the presented thoughts, Z. Baletić: (*Марксистичка теорија на економската криза*) *Marxist theory of the economic crisis*, Zagreb, 1965, on several pages.

¹⁵ Ljubomir Tadić, *ibid.*, and Slobodan Perović, *ibid.*

¹⁶ Jürgen Habermas was professor of political sociology and philosophy at the Johann Wolfgang Goethe University in Frankfurt am Main.

¹⁷ More specifically, Jürgen Habermas, (*Проблеми легитимације у касном капитализму*) *Problems of legitimation in late capitalism*, Zagreb, 1980, p. 10.

Habermas asserts that a crisis is determined based on objective criteria and not merely by members of society declaring the presence of the crisis. Thus, the concept and phenomenon of crisis must encompass and threaten the connection between systemic and social integration. According to this author, systemic integration refers to specific activities directed toward a self-regulating system. And social integration refers to a system of institutions within which social actors operate.¹⁸

2.2 Legal crisis and the causes of its emergence

The preceding explanation of the general concept of crisis allows us to define the notion of legal crisis, which is a highly complex issue. The presentation of this topic is structured within the framework of the systematics of the key questions related to the legal crisis. First, at the outset, we define the terminology associated with the term legal crisis. In legal literature, other terms for this concept are encountered. For the concept of legal crisis, the following expressions are in use, which, as a rule, have the same meaning. We can point out "the impotence of law," "the collapse of law," "the anaemia of law," "the agony of law," "hypertrophy," and "the collapse of the legal system."¹⁹

As previously emphasised, law is the most important form of regulating social relations. This is its function. In performing this function, the law regulates both the dynamics and the dialectics of life. And in that sense, it is continuously evolving. The representative of the justice is the law. However, in regulating relations, law must be in harmony with the needs and demands of society and its citizens. Practice shows and the occurrence of crisis confirms, that discrepancies between social facts, from one side, and legal norms from another side, frequently arise. These discrepancies manifest on two levels: first, when the law fails to reflect actual social relations but instead preempts them, resembling a wish list; and second, when the legal norm, once enacted, lags behind societal developments. When this happens, and the crisis confirms it, we often witness a "rebellion of facts against the law."²⁰

Given that the law regulates the most important social relations, it is impossible for significant societal events or changes to occur outside or independently of the law, or at the very least, without consequences for the legal system. These circumstances clearly indicate that societal conditions and changes inevitably affect the law, just as conditions and changes within the law affect society. There is mutual influence and interaction between social conditions and the law.²¹

¹⁸ Jürgen Habermas, *ibid.*

¹⁹ In the exposed connotation and in the scientific article of Jovica Trkulj, "(Право под таторством политике) Law under the tutelage of politics", (*Криза правног система*) *Crisis of the legal system*, Belgrade, 1990, p. 35.

²⁰ G. Morin, (*La révolte des faits contre le code*) *The revolt of facts against the code*, Paris, 1920

²¹ Stevan Vracar, cited work, p. 67 – 69.

Based on these preliminary observations, when it comes to the legal crisis, the complex causes of its emergence are extensive. Causes may arise, first, in the field of legislation; second, in the practical application of law; third, in the sphere of constitutionality and legality, and more. This paper focusses on the first sphere, namely, legislation and legislative policy.

2.3 Deficiencies in Legislative Policy

The state creates the law. The competent body of the state, which is the legislative body or legislative power, establishes the law. It is important to emphasise that the legislative body is a political entity of the state. As a result of this notable fact, legal crisis are often connected to politics. Consequently, the legal and political sciences assert that the order of a legal state should derive from societal democracy on the one hand, and the system of human freedoms and rights on the other. Therefore, when politics become arbitrary and alienated from real life, the legal order loses its legality and legitimacy. This creates favourable conditions for a societal crisis in various areas, especially a crisis in law.

The formula outlined above highlights the circumstances that legislative policy should (must) consider when regulating specific societal relations with the law, that is, with the legal norms. If legally relevant circumstances and other societal factors are overlooked, it is justified to speak of deficiencies in legislative policy, and each of them may contribute to, or be an "eligible" reason for a legal crisis.

In assessing the specific causes of legal crisis, we focus on, in our opinion, some of the more important ones.

1. One of the serious deficiencies in legislative policy is the insufficient alignment between societal facts on the one hand, and legal norms or law, on the other hand. - Societal facts reflect the existing reality, real life, or factuality. In such cases, the law loses its power and mission. The law betrays its idea. This observation resonates with French legal writer Maurice's thought that "a rebellion of facts against the law" occurs.

Several reasons contribute to this disconnect, such as a gap between societal facts and the norm itself. First, legal norms regulate real, existing conditions. Legal theory emphasises that legal norms should adapt to societal relations. The reverse rule does not apply, meaning that real conditions cannot be adjusted to fit the legal norms created by the state. Thus, if a legal norm results solely from political decisions without a thorough scientific examination of the issues it aims to regulate, the law often becomes a "wish list." Such norms may resemble declarations or socio-political acts rather than legal acts.

2. Speed and inadequate study of specific issues. – In this review, as highlighted, the law, as a representative of the legal system, is a critical concern in this context. However, legal crisis affect all types of legal norms issued by the legislature of the country. Regardless of the type of legal norm,

lawmakers must thoroughly study the issues they aim to regulate. This involves determining which type of legal norm should govern the specific issue and ensuring a proper analysis that considers both theoretical and practical arguments. However, the speed with which legal acts are adopted also affects their quality. Legal theory underscores that an intention, idea, or need may be quickly turned into law without consulting science or practice. The legal norm passed in such a way compromises its quality and practical implementation.²²

It is a known occurrence in the legislation of many countries that laws (or other legal regulations) are adopted through the so-called "summary procedure." This possibility is foreseen in the rules of procedure of the legislative houses of specific countries. When laws are adopted through a fast-track procedure, it is evident that during their adoption, there is a lack of debate while they are in the draft or proposal stage. The public, and especially the expert public, is not consulted. Opinions are not sought from professionals such as experts or relevant academic institutions. Such procedures often point to the occurrence of a legal crisis. On the other hand, in the case-law of the constitutional courts, there are numerous cases formed based on specific initiatives submitted by authorised proposers, requesting that the constitutional court engage in the process of reviewing the constitutionality and legality of the legal norms adopted in this manner.

3. Formalism as a particular problem in legislative policy. - In general, and particularly in civil law, the rule is that form is necessary for certain legal acts, while formalism is harmful. This rule applies *mutatis mutandis* to legislative policy, as well. And even more specifically, the speed and insufficient study of the issues that need to be legally regulated can also lead to a conscious formalism that crosses the border and that no longer serves the purpose for which it was established.

Excessive demand for various types of validations, formalisations, and publicity can lead to a disconnect between real-life situations and formal legal facts.

4. Issues related to the interpretation of law and legal crisis. – After the adoption of laws, it is not uncommon for a need to arise for their interpretation. In truth, the need for interpretation may pertain only to specific legal norms or provisions, not to the entire law. This is generally the case.

The need for interpretation often arises from complicated and insufficiently clear legal formulations. This legal condition complicates the application of laws or specific legal norms. In their application, legal situations may arise where the legal norm is applied inconsistently to identical situations.

There are various types of legal interpretation. A crucial distinction in legal interpretation is based on the subject who is called upon to interpret the law. According to the given criterion, interpretation may be authentic, judicial, or doctrinal/scientific. In the context of the topic under discussion, authentic

²² Slobodan Perovic, work cited, p. 13.

interpretation is of particular importance. Authentic interpretation is conducted by the body that adopted the regulation, the legal norm, or the law, which is the legislative body.

Through authentic interpretation, existing law is interpreted, and certain ambiguities that may arise if a norm contains vague or imprecise language are clarified. This situation frequently occurs due to the undeniable fact that there are entire areas of social and legal life for which, in their regulation, new terms and different approaches in the drafting technique are used. However, what is of fundamental importance in interpretation is that, if carried out correctly, interpretation does not extend or alter the law. If this occurs, the interpretation effectively "creates new law," which constitutes a breach of the principle of constitutionality and legality. In the context of the topic, this suggests and leads to the conclusion that the law is in crisis.²³

Thus, it is clear that the authentic interpretation provided by the legislative body forms an integral part of the published law. Authentic interpretation should be applied from the moment the published law comes into effect, but only to new cases, and not to resolved cases – *cause finite*.²⁴

5. *Retroactive effect of laws.* – Legal theory, specifically the General Theory of Law, has long been preoccupied with the question, or rather the problem, of the retroactive effect of laws, also known as retroactivity. In principle, scholarly thought advocates for the prohibition of the retroactive effect of laws, meaning the prohibition of applying laws to situations or legal relations that arose before their entry into force. This prohibition is based on the simple reasoning that, as a general rule, laws are intended to apply only to situations and relations that arise after their entry into force. This principle applies not only to laws but also to other legal regulations.²⁵

From the perspective of comparative law and even international law, the retroactive effect of laws has always been a contentious issue, with strong support for the prohibition of retroactivity. Among the significant legal documents with clear provisions in this regard, we highlight the following: In the French Declaration of the Rights of Man and Citizen of 1793, it is emphasised that "the retroactive effect of law constitutes a crime."²⁶

The famous French constitutionalist Benjamin Constant also took a clear stance on this principle. He asserts that the retroactive effect of law is the greatest assault that law can commit. A law with retroactive effect is not a

²³ Slobodan Perovic, work cited, p. 17.

²⁴ Svetomir Skaric, (*Уставот на Република Македонија, Научно толкување*) *The Constitution of the Republic of Macedonia, Scientific Interpretation*, Skopje, 2014, p. 273 – 274.

²⁵ Svetomir Skaric, *ibid*.

²⁶ This Declaration was adopted on 24 June, 1793 by the Convention of France and at the time when the Jacobins were in power. Although this Declaration did not enter into force at all, it is a "legal monument" of special importance for legal history and represents the most democratic constitution at that time.

law. The French "Code Civil" of 1804 also contains a clear provision regarding the prohibition of retroactivity among the civil codes, and Article 2 of the "Code Civil" explicitly sanctions the retroactive effect of laws. More specifically, the cited provision states: "The law applies only for the future, it has no retroactive effect."²⁷

From the standpoint of international law, the position of the Council of Europe is sufficient to illustrate this issue. Specifically, the Parliamentary Assembly of the Council of Europe adopted a Resolution (*Resolution 1096/1906*), which does not provide for the retroactive effect of "lustration laws."

Briefly on the Constitution of the Republic of North Macedonia of 1991. The Constitution emphasises that laws and other regulations cannot have retroactive effect, except in cases where it is more favourable for the citizens.²⁸ The mentioned exception is of general significance and applies to all laws and regulations, not just the Criminal Code. In relation to this constitutional provision, it can be freely stated that the phrase "more favourable for the citizens" contains elements that allow the provision to be called a "euphoric provision." This provision enables the retroactive effect of a large number of laws and other regulations. However, the Constitution imposes certain limitations on retroactivity. Specifically, the 1991 Constitution does not permit, first, the retroactive effect to apply to the entire law or to subordinate legal regulations. The second important limitation concerns the prohibition of retroactive effect for specific provisions if, first, their application would violate acquired rights—*iura quaest*a; and second, if it is a matter of resolved cases.

If the comparative regulation of the 1991 Constitution of the Republic of North Macedonia is analysed regarding the retroactive effect of laws and the solutions contained in the constitutions of the Socialist Republic of Macedonia from 1963 and 1974, the regulation in the 1991 Constitution is of a lower legal standard compared to the solutions in the constitutions of the "socialist law" regime. There are several reasons for this, with two being particularly significant. In the previous socialist system, laws were, as an exception, permitted to have retroactive effect if it was required by "social interest." The second case concerned subordinate legal regulations. Specifically, for subordinate regulations, the prohibition was strict: under no circumstances could subordinate regulations have a retroactive effect.²⁹

6. Hypertrophy and frequent changes in legal norms. – From the sphere of legislative policy, an important aspect is the abundance of legal norms adopted by the legislative body. In other words, this refers to the number of laws, which, under certain conditions and in specific legal situations, can be a

²⁷ The mentioned provisions of the "Code Civil" are elaborated separately by Dr. Miodrag Jovicic, (*Закон и законитост*) *Law and Legality*, Belgrade, 1977, p. 96.

²⁸ More specifically, Article 52 Paragraph 4 of the Constitution of the RSM from 1991.

²⁹ For what was also presented in the work of Dr. Miodrag Jovicic, cited work, p. 151.

cause, or one among other causes, of a legal crisis. The fact remains that the modern world consists of and encompasses highly complex social relations, and consequently, there are inevitably more legal norms to regulate them. This is an important characteristic of the modern world and contemporary law, in contrast to periods that we have come to describe as the "infancy" of law.

However, alongside the aforementioned circumstances that point to the need for legal regulation of specific relations, it should not be overdone. The law should not become bulky or hypertrophic. Even in Roman law, the negative side of having a large number of laws was recognized. With the emergence of legal hypertrophy, the law becomes bulky and difficult to navigate. As a result, specific problems arise in the application of the law, with the tendency for the law to be either not applied or applied inconsistently. In this regard, the thinker Karel Kosik would say that "politics is a game for power and a game of power."³⁰

In addition to the bulkiness of the law in terms of the sheer volume of legal norms, specifically laws, it is observed that many laws exhibit excessive regulation, meaning that they contain a large number of articles. Although rare, the fact remains that some laws comprise over 1,000 articles.³¹

When discussing the volume of certain laws, legal literature also addresses, in the opposite sense, laws with a very small number of articles. For example, in Cyprus, a Stabilisation Law was adopted that had only two articles.

Finally, in connection with the hypertrophy of the law, the phenomenon of frequent amendments to laws and other legal regulations is also examined. It almost seems to have become a "normal" occurrence for laws to be frequently amended. This happens, in truth, sometimes within the same calendar year in which the original text of the law or specific legal norm was adopted. Legal literature often cites an example wherein the "ink" on the original text has not yet dried before an amendment to the same law is introduced. The same applies to other regulations.

Regarding amendments to specific regulations, it is not uncommon for these to be adopted hastily, quickly, and through unwise actions by the competent bodies authorized to do so. This refers both to the proposers of the amendments (usually the government of a country) and to the adopters of such amendments. In the case of a law, this refers to the legislative body.

³⁰ Karel Kosik's thoughts are quoted in Vladislav Popovic's scholarly article, "*Дали постоу криза правног система*) *Is there a crisis of the legal system*", (*Криза правног система*) *Crisis of Legal System*, Belgrade, 1990, p. 145.

³¹ For instance, in the legal order of the RSM, the Law on Obligations from 2001 contains 1141 articles. Of course, this number of articles does not include the numerous amendments to the Law that were adopted after its entry into force. Given the quantity of articles in the Law on Obligations, we can freely state that we are facing a codification of the obligational relationships in our legal system in the truest sense of the word.

7. *The Legal Awareness of Specific Subjects.* – In the preceding discussion, we highlighted some, in our view, of the most important factors that affect the quality and quantity of the law. Deficiencies in the quality and quantity of the law can, and typically do, affect the legal awareness of specific subjects. Therefore, legal awareness constitutes an element of the crisis of the law.

From the perspective of the topic elaborated in this work, legal awareness is defined as the relationship between the subjects of the law and the legal norm itself. This pertains to the conscientious relationship of the subjects toward the law or the legal norm. In this context, if a subject of the law behaves in accordance with the legal norm, it is said that the subject possesses appropriate legal awareness. In such cases, we have well-developed legal awareness.³²

However, there are exceptions to these principles, and situations arise where it is difficult to speak of developed legal awareness among the subjects of the law. Several factors influence legal awareness. Essentially, these are the deficiencies inherent in the law itself. Those were previously discussed.

When summarising the deficiencies, and evaluating from the perspective of developed *vis a vis* underdeveloped legal awareness, they can be analysed into two complexes. The first complex pertains to the circumstances surrounding the creation of the law, while the second complex relates to the application of the law. From the first complex, as noted in the work, the over-regulation of social relations on the one hand, and the frequent amendments to legal norms (regulations) on the other, objectively hinder the development of legal awareness.

How the law is applied, without a doubt, plays a significant role in shaping legal awareness. According to the scientific views of the General Theory of Law, the law must be applied according to strictly established objective criteria. Reduced to a key principle, this means that the law must be applied in the same manner to all subjects of law who find themselves in the same legal situation. If this does not happen, confidence in the law and its societal function is lost. In this sense, equality before the law in a country becomes a constitutional principle. Modern constitutions explicitly affirm this and regulate it through specific constitutional-legal norms. This principle is also enshrined in the Constitution of the Republic of North Macedonia.³³

In addition to the equal application of the law to all subjects to whom it applies, legal awareness also depends on how the law is applied by state authorities responsible for its enforcement. In this context, the principle of constitutionality and legality is violated if, among other things: first, the law is applied unequally in equal cases; second, if the law is not applied at all; and

³² Slobodan Perovic, (*Примереност правних норми друштвеним односима*) *Suitability of legal norms to social relations*, (*Правни живот*) *The legal life*, Belgrade, 1983, no. 4.

³³ For this, Article 8, Paragraph 1, Indent 3 – Rule of law; and Article 9 Paragraph 2 of the Constitution, according to which regulation clearly underlines that all citizens are equal before the Constitution and the laws.

third, if the behaviour of specific subjects is tolerated in contradiction to the law, while the legal norm is still applied to others.

Apart from the mentioned factors, there are other elements that directly or indirectly influence the formation of legal awareness. For example, if the law is not applied to certain social relations or is not enforced as prescribed, or if the principle of legality is not respected. In such cases, the idea of the law is compromised. In these situations, the established level of legal awareness is also disrupted. Another example is even more pronounced. For instance, if a law in a given country violates the presumption of good faith and treats all citizens as untrustworthy unless proven otherwise (as could be the case with the origin of property), it is rightly concluded that such a law stems from the legislator's general suspicion and is contrary to the principle that whoever asserts that another is untrustworthy must prove it, bearing the burden of proof – *onus probandi*. In such an example, legal awareness is always called into question. Legal awareness cannot develop because it is based on the flawed assumption that all citizens (subjects of the law) who possess certain property are untrustworthy until proven otherwise.³⁴

3. Instead of a Conclusion

If we begin with the concept and definition of a legal crisis, we can identify two important attributes within this conclusion. The first attribute of the legal crisis is legal uncertainty. Legal uncertainty should be evaluated and observed as a social fact. The second attribute concerns the endangerment of the principle of constitutionality and legality.

These attributes result from various societal causes. Social causes, in fact, represent specific legally relevant reasons based on which one can assess whether there is a legal crisis in a given society and what it is due to. This means that the causes are evaluated as specific criteria for this phenomenon—the phenomenon of the legal crisis. Typically, when discussing a legal crisis, the societal causes are numerous. In such cases, we speak of their accumulation and their cumulative impact on the law and the legal system. It is rare for a single cause to be sufficient to trigger a legal crisis.

This paper attempts, and we believe successfully, to focus on just one segment of the many causes that provoke a legal crisis, and thus the crisis of the legal system as a whole. This segment pertains to causes within the sphere of legislation. Specific deficiencies that exist in legislative policy were highlighted. We limited ourselves to some of these deficiencies because the shortcomings in legislative policy are numerous and diverse.

Given the indisputable fact that there have been, and still are, numerous deficiencies in legislative policy, each of which, individually and collectively,

³⁴ Slobodan Perovic, (*Крива правног система*) *Crisis of the legal system*, cited work, p. 20 – 21.

represents sufficient and "suitable" cause for provoking a legal crisis in society, there is also a particular idea that is developing in a part of legal theory. More specifically, due to the numerous problems in almost every legislative system, the issue of the legal crisis raises the essential need for the foundation of a science of the politics of law. In other words, the idea is to establish a science of legislative policy.³⁵

Based on what has been presented, and within the framework of this concluding observation, the question arises: What is the solution to the legal crisis? In our opinion, the answer is not difficult to provide. First and foremost, the solution to the legal crisis requires the elimination of all attributes and other societal causes that lead to the crisis. In this paper, these causes have been enumerated, particularly in terms of entire complexes of causes. However, as is well known and evident from the text itself, this paper has specifically focused on the causes related to legislative policy, identified through the concrete deficiencies in the law as a significant cause of the crisis.

Regarding the causes of the legal crisis, from the perspective of lawmaking, the law must be aligned with social facts. In this sense, it is necessary to ensure the adoption of "good laws." Good laws are synonymous with the rule of law in the sense of a legal state. The rule of law is one of the prerequisites for resolving the legal crisis and for law to emerge from the crisis.

Finally, and importantly, the rule of law represents a *conditio sine qua non*, a necessary condition and assumption for the realisation of human freedoms and rights and their promotion and affirmation in every modern democratic state.

³⁵ More specifically, Todor Podgorac, (*О нужности засновања науке политика права (законодавне политике)*) *On the Necessity of Basing the Science of Legal Policy (Legislative Policy)*, (*Криза правног система*) *Crisis of the Legal System*, Belgrade, 1990, p. 40-45.