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Organization of the "Court/Judicial Law" in Croatia and EU as a Synthesis of Civil-Commercial and Criminal Law

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The paper treats the problem of the existence of "court/judicial law" as a unity of civil-commercial and criminal law in Croatia and European Union. The "division" in the legal space of the Republic of Croatia and in the EU member states arose from the past and is basically the result of the specific caracter and "political preference" of the criminal justice system. However, the division into civil-commercial and criminal law is maintained in Croatian law and in European Union even now, either by inertia as a habit that is difficult to change, or (most likely) by individual interests within the judiciary and judicature. In a democratic civil society, not political but economic crime prevails, which cannot be followed and understood without knowledge of both civil-commercial and criminal law. Ongoing, mostly too slow and ineffective criminal proceedings in Croatia and EU (many of them in "specialized" courts of justice), fully confirm this thesis.

Keywords:
court/judicial law,
civil-commercial law,
criminal law,
economic crimes,
business fraud,
unity of civil-commercial
and criminal law

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1 Introduction

"Court/judicial law" is at this moment in EU and especially in Croatia a completely unnamed legal concept.[1] It will take time for it to "become domesticated", to become a named institute and, of course, the question is when this will happen and whether it will happen at all. The general development of law, however, is moving towards the formation of the clear institute of "court/judicial law" as a set of knowledge and skills that every judge of regular courts must have (or will need to acquire).

In Croatian law as well as in the laws of main EU member states (Germany, France, Italy, Austria), the division into civil and criminal judges (although, very dubious) has recently shown even a tendency to strengthen; moreover, an atmosphere is being created that there is (almost) a subjective right to be only a civil ("civilist") or only a criminal judge ("criminalist"). Open or tacit justifications of such a concept start from the "advocacy" for the necessary "specialization" of judges because this in itself and by the nature of things raises the quality of trials and the level of legality in state.

The reality, however, is quite the opposite and the insistence on separating civil and commercial law from criminal law causes an impoverishment of legal knowledge which, although "specialized" on the one hand (e.g. in the special courts), on the other hand (in practice) is increasingly "connected" and without this connection it is not possible to follow the increasingly complex movements in society, especially in areas that involve multiple branches of law.

If one wishes to deepen the theoretical aspect of this opinion, it is only necessary to emphasize that (Croatian and EU) law - both theoretically and practically and professionally and scientifically - is sufficiently divided (into public-private, civil and commercial, labor, family, criminal, etc.) and that any further "atomization" of law becomes suspect and objectively unacceptable.

[1] The terms "court law" or "judicial law" come from the Anglo-American legal circle and denote mainly solutions of court practice in legal cases. The laws of the Euro-continental legal circle (Germany, Italy, France, Austria, Croatia), except in rare cases, some of which will be presented in this work, use the same expressions only in the context of presenting "court or judicial praxis".

The title of this paper does not raise the question of the need for a synthesis of civil and commercial and criminal law (especially through the institute of "court/judicial law"); on the contrary, the paper starts from the *a priori* necessity of this synthesis and tries to provide relevant answers as to why this synthesis is necessary. The author of this paper is, however, aware that such a "position on synthesis" will encounter (considerable) resistance. Something that has existed for a long time and on a massive scale always exists because certain interests (proprietary or non-proprietary) are behind it and it is always the most difficult to fight against them.

It should also be taken into account that the existing division into civil and criminal judges (and lawyers in general) is the result of a certain historical inertia, that it has become a firmly and deeply rooted habit (and habits are difficult to abandon) and that in the understanding of many lawyers it is "such in itself".

In so-called "transitional" countries (as Croatia), problem is becoming increasingly greater because the necessary change in the state legal system must be carried out with the habits of the old system. Law (and judiciary as one of the pillars of society) must follow the movements (changes) in the state, but it must also be an important element of security and stability in society. The synthesis of civil-commercial and criminal law should not undermine or call into question this social dimension.

If such a synthesis were to be accepted (neither easy nor short process), the question of a peaceful, gradual and reasonable organization of legal and judicial system at all levels remains, first and foremost. This does not mean constantly postponing this problem's resolution, because modern life does not allow for "tapping" on the spot and actually punishes any inability and unwillingness of the state to remove from the legal system conditions that hinder and stop the development of society.

It should also be said at the outset that the proposed synthesis[2] of civil-commercial and criminal law in Croatia and EU does not in the least call into question the constitutional principle of the independence of the judiciary; indeed, it even

[2] The proposed synthesis briefly means that the organization of "court/judicial" law in Croatia and the EU member states should: 1) have a unique organization of general "natural" courts which will then organize within their system the best "specialized" assistance to subjects of law (without the existence of specialized or *ad hoc* courts) and 2) develop judges who will not only be specialized in one matter ("civilians" or "criminalists") but know both matters (civil-commercial and criminal) of law.

strengthens this principle because, in essence, it seeks to find solutions to improve the quality of trials (and a better-quality judge is always a more independent judge). The content of the paper is organized into four parts. The first part of the paper (introduction) identifies the theoretical and practical importance and problems of the topic, defines the purpose and objectives of the research and describes paper's general content. The second part (reasons for the "separation" of civil-commercial law and criminal law) analyses the reasons for the division of the Croatian and EU (some member states) legal system into civil-commercial law and criminal law, which came from practice and politics (and not from theory or legislation). The third part (theoretical and practical reasons for the "synthesis" of civil-commercial law and criminal law) presents the reasons for the synthesis of civil-commercial law and criminal law in Croatian and EU legal system and provides answers to all questions regarding it. The fourth part (conclusion) presents a synthesis of all solutions and insights of the paper and states its expected scientific contribution.

2 Reasons for the "separation" of civil-commercial law and criminal law

In the science of former Yugoslav and now Croatian law, there are not find any specific works that either traced the path of such a "division" of civil-commercial and criminal law or justified it later. It is the same with the legal theory of the most important EU member states (Germany, Italy, France, Austria).

One thing, meanwhile, is not in dispute. The division was created by practice. However, it is not possible to determine exactly when, how, and with what legal argumentation it came about. For example, the assumption that in Croatia (former Yugoslavia) it was politically directed is not without foundation.[3] Therefore, using the example of Croatia, an attempt will be made to explain all the relevant reasons for this separation. In any case, the division has existed since the very beginnings of the former state (1945) and it still exists today, with no signs of its reconsideration. Since 1990 there have been newer, even more drastic forms of this division.

[3] It is a well-known fact that in the former state or system, almost all (certainly around 90%) court presidents were criminal (penal) judges. This was certainly a clear expression of a certain political stance.

In the (recent) Croatian law, for example, special regulations against serious forms of crime stand out in particular - the USKOK Act 2009 - above all.[4] This law, among other things, stipulated that: 1) "USKOK courts" are only some county courts (Zagreb, Split, Rijeka and Osijek), 2) "USKOK judges" are only criminal judges, but not all of them, but only some, specially selected ones, 3) these judges have an increased salary and some other benefits, 4) these judges, which is emphasized as particularly important, have passed a "security check"[5].

The proclaimed goal of the USKOK Act (increased fight against serious crime) is not doubtful, but the solutions in the law are very doubtful. Admittedly, the effects of USKOK to date (from 2009 onwards) should be analysed rationally, but even a general analysis based on the work and results to date does not give positive answers. Crime has not been reduced and neither have investigative and trial procedures been faster or more efficient. The expected special expertise of the "USKOK courts" (and "USKOK judges") is not visible, and in some (very important) cases even rookie mistakes have been recorded (e.g. failure to seize the object of a criminal offense).

Based on such legal solutions, the first aspect of the division problem in the Croatian legal (judicial) system opens up. Courts and judges are possibly divided into "equal" and "more equal", and this certainly does not contribute to the harmonious operation of the entire judicial system. Therefore, based on what has been presented regarding the topic, it could be concluded that the former federal concept (from the SFRY era) of the criminal court (and criminal judges) as a "particularly" important court (and "particularly" important judges) has not been abandoned in Croatia.[6]

The second argument of the concept that justifies the division into civil-commercial and criminal law is the reference to the increased expertise of these special (in the described case of "USKOK") judges and state attorneys. It is forgotten, however,

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[4] *Zakon o Uredu za suzbijanje korupcije i organiziranog kriminaliteta* (Act on the Office for the Suppression of Corruption and Organized Crime), Narodne Novine, 76/09, 116/10, 145/10, 57/11, 136/12, 148/13, 70/17. The popularly called "USKOK Act" was first passed in 2009.

[5] The subject of "security checks" is regulated in the law of the Republic of Croatia by a special act - *Zakon o sigurnosnim provjerama* (Security Checks Act), Narodne Novine, br. 85/08, 86/12. It is good that the Croatian legislator regulated such an important and sensitive matter by regulation, but it is an open question whether such regulation enables the achievement of the proclaimed goals expressed in the title of the law. According to the author of this paper, the best "security check" is - the results of the work (of judges) and the analysis of those results.

[6] Sociologically and logically, it is incomprehensible why a criminal case (e.g. giving and receiving a bribe of a few thousand euros) would be more difficult, professionally more complex and socially more valuable than, for example, a commercial dispute with a value of several tens of millions of euros.

that "USKOK" state attorneys and judges operate primarily in the field of economic crimes where the civil-commercial dimension is an integral, sometimes even decisive part of the criminal law norm.

Both main reasons for the division (1. greater importance of some courts compared to others and 2. increased professional "specialization" of judges) into civil-commercial and criminal law are actually *argumentum a contrario* and at the same time two main reasons for the synthesis that the paper deals with: shouldn't every court that protects the rights of citizens and business entities be equally important and doesn't the professional "specialization" of individual judges (and lawyers in general) require the unification of knowledge of several branches of law in a certain domain?

In the Republic of Croatia, the State attorney's office (*Državno odvjetništvo*)[7] unites the former "Public Prosecutor's Office" (*Javno tužilaštvo*) and the "Public Attorney's Office" (*Javno pravnobraniteljstvo*) in one integral institution (body). On the one hand, this is not a good solution because the state attorney as a "public prosecutor" acts on the principle of independence from the executive branch, and as an "ombudsman" must necessarily cooperate with the executive branch in a coordinated manner. On the other hand, the current situation is good in that the Chief State Attorney is a person who is equally proficient in both criminal and civil law - all that remains is to extend this solution to all state attorneys and all judges.[8]

3 Theoretical and practical reasons for the "synthesis" of civil-commercial and criminal law

The previously described reasons for separation, since they are insufficient to justify such a process, speak in favour of merging these two branches of law into a single whole. At the general level of law and legal science, the question of the relationship between the "specialty (specialization) of law" and "law as a unity" should be opened

[7] Zakon o državnom odvjetništvu (State attorney's office Act), Narodne novine, br. 67/18, 21/22, article 3. par. 1.: "(1) Državno odvjetništvo samostalno je i neovisno pravosudno tijelo ovlašteno i dužno postupati protiv počinitelja kaznenih djela i drugih kažnjivih djela, poduzimati pravne radnje radi zaštite imovine Republike Hrvatske te podnositi pravna sredstva za zaštitu Ustava Republike Hrvatske i zakona."

[8] Another logical question arises (which is only superficially touched upon in the thesis of the paper): why is the system of organization of the state attorney's office in Croatia "unified" (following the solution of this paper on the synthesis of civil-commercial and criminal law) and the system of courts "divided" and fragmented into general (regular) and various special courts (following the division into civil-commercial and criminal law, but also more than that)?

(or reopened). It is certain that the specialization of law and lawyers has its place in legal life, but it is equally important to take into an account the "entirety of law".

In natural sciences, for example, there is a special concept - "atom" - it is the last and smallest particle of an element, which, however, contains all the characteristics of that element. Following that example, "court/judicial law" would be the atomic (i.e. the smallest) unit of law that contains all the elements of the relevant law and that cannot be "broken" into even smaller, different or finer parts.

This thesis, as the main general argument for the synthesis of civil-commercial and criminal law, has a special basis on the following (theoretical-practical) reasons:

- original Austrian law, as a historical model for many laws[9] (particularly Croatian law), did not recognize the division into civil-commercial and criminal law,[10]
- in many courts there were and are "dualist" judges (who deal equally with civil-commercial and criminal law) and most lawyers also deal with both parts of law,[11]
- the state attorney's office cumulates both civil and criminal law in its jurisdiction,
- civil judges (civil and commercial) in resolving the so-called previous questions must apply the "other" branch of law,[12]
- in criminal proceedings, an issue from the field of civil and commercial law is not a question of fact but a question of law[13] and

[9] Kühn, Z. (2011). The Judiciary in Central and Eastern Europe: Mechanical Jurisprudence in Transformation?, Martinus Nijhoff Publishers, Leiden, USA, Czechia, Netherlands, 1-4.

[10] The chief editor of the Austrian General Civil Code (*ABGB*) of 1812 was the great jurist Franz Zeiller (1751-1828) who was also, very interestingly, one of the editors of the Austrian Criminal Code of 1803 (*Codex poenalis criminibus*). Zeiller was also a professor and rector of the University of Vienna, but also an advisor to the Supreme Court (the so-called *Hofrat* - expert advisor).

[11] Krenn, C. (2022). The Procedural and Organizational Law of the European Court of Justice - an incomplete transformation, Cambridge Univeritsy Press, United Kingdom, 5-25.

[12] Both civil and criminal judges may find themselves in the situation of resolving so-called preliminary issues in civil or criminal proceedings. They can "avoid" this (wait for the issue to be resolved by "that other" judge), but they can also resolve such an issue themselves (the resolution of that issue then applies only to that case). By the nature of the matter, in such a case, the civil or criminal judge must also be familiar with the "other" law.

[13] A criminal issue in civil proceedings (and *vice versa*) is not a question of fact (for which, e.g. one could seek someone's expert opinion) but a question of law that the judge must know (*iura novit curia*).

– final key argument: the criminal acts of economic crime cannot be understood, investigated and tried without increased knowledge of both branches of law.

The last reason (argument) deserves a more detailed analysis. A particularly valuable qualification and systematization of economic crimes (fraud in business operations, economic crimes, fraud) in Croatian legal literature was given back in 2010.[14] Even a first glance at the terms contained in these crimes (abuse, trust in business operations, fraud[15], evasion[16], bankruptcy crimes[17], crimes against market competition[18], money laundering, capital markets, etc.) indicates that these crimes cannot be understood without knowledge of their civil and commercial component which is actually an integral part of the overall criminal law norm.[19]

This thesis can be test in the most famous criminal proceeding in the Republic of Croatia (against one of the former Prime Ministers of the Republic of Croatia.). The subject of the proceeding is the charge of accepting bribes and abuse of position. According to the public prosecution, this second offense consists in the fact that (in return for the bribe received) a minority shareholder was given the right to manage the company, as a permanent right of this shareholder. The matter, as is known, is still *sub iudice*[20] and any entry into the merits of the criminal offense must be very carefully avoided. However, the civil and commercial dimensions of this criminal proceeding can be pointed out, especially through three questions: 1. Is the contract on the transfer of management rights void as a product of the criminal offense of accepting bribes? 2. Is the same contract possibly invalid because the minority

[14] Novoselec, P., Roksandić Vidlička, S. (2010). Gospodarska kaznena djela u novom Kaznenom zakonu, *Hrvatski ljetopis za kazneno pravo i praksu*, Vol. 17, No. 2., 699-728. Economic crimes (fraud in business operations, economic crimes, fraud) are numerous and socially very dangerous (abuse, fraud, evasion, bankruptcy crimes, crimes against market competition, crimes against the capital market, violation of creditors' rights, favoritism, accepting and giving bribes, etc.). It does not take much to prove that in almost all of these crimes, a civil law (civil-commercial) feature is clearly expressed and that without knowledge of civil law a criminal law norm cannot be properly understood and judged.

[15] Rider, B. (2015). (Research Handbook on) Internatiional Financial Crime. Elgar Publishing, Northampton, USA, 315-380.

[16] Bourton, S. (2024). Tax Evasion and the Law: A Comparative Analysis of the UK and USA, Routledge, London, United Kingdom, 2-18.

[17] Wickouski, S. (2007). Bancruptcy Crimes, 3rd edition, Beard Books, Washington, USA, 1-16.

[18] Johnson, D. (2025). Competition Law and Financial Crime, Routledge, New York, USA, 4-22.

[19] Cools, M. and others (2011). EU Criminal Justice, Financial & Economic Crime: New Perspectives, Maklu Publishers, Antwerpen, Belgium, 24-31.

[20] The case (has), in fact, been *sub iudice* for a very long time (some other proceedings against the same defendant are ongoing in parallel), but the length is certainly conditioned by some civil law "complications" of the case.

shareholder receives the exclusive right to manage the company? and 3. (especially important) Is the same contract a valid condition that the minority shareholder will manage the company as long as he has the shareholder (co-ownership) share that he currently has? There is no doubt that these are primarily civil (civil-commercial) issues and that, very likely, the rather inefficient course of the criminal proceedings in question is largely due to the neglect (perhaps, in fact, most likely insufficient knowledge) of the aforementioned civil-commercial component of the case.

Author's overall commitment to the synthesis of civil-commercial and criminal law has also foothold in one particular concept, almost non-existent in the Croatian law for the contrary of the laws of main EU member states (Germany, Italy, Austria). It is the institute of the "natural judge" (*der Gesetzliche Richter, il giudice naturale*)[21]. It is a concept related to strict respect for absolute, real, territorial and "collegial" jurisdiction.[22] The German Constitution (article 101. par. 1.) under the name *Verbot von Ausnahmgerichten* (prohibition of exceptional, extraordinary courts) determines that such (irregular, unnatural, exceptional, extraordinary) courts are inadmissible (...*sind unzulässig*) and that citizens cannot be deprived of their right to their lawful judge (*niemand darf seinem geretzlichen Richter entzogen werden*)[23]. The Constitution of the Republic of Austria also stipulates similarly (in article 83. paragraph 2.)[24].

The right to a natural judge (*das Recht auf den gesetzlichen (bestimten) Richter*) is, according to German law, the so-called *Justizgrund Recht* (foundation of court/judicial law) which determines (in advance and precisely) which court and which judge will have jurisdiction in specific trials (both from a substantive and procedural point of view).

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[21] Backhaus, V. (2010). Der Gesetzliche Richter im Staatsschutzstrafrecht, Peter Lang, Frankfurt (Main), Germany, 15-24; Ragone, S., D'Amico G. (2011). The Evolution and *Gestalt* of the Italian Constitution in Von Bogdandy, A., Huber, P.M., Ragone S., *Consitutional Foundations, Volume II*, Oxford University Press, United Kingdom, 309-315; Scorselli, G. (2010). Ordinamento giudiziraio e forense, 3a edizione, Giuffre Editore, Milano, Italy, 203-206.

[22] The right to a "natural judge" (*das Recht auf gesetzlichen Richter*) includes the right and obligation to have a judge with absolute subject-matter, territorial and collegial jurisdiction decide on a specific legal matter. Walter, R., Mayer, H. Kucsko-Stadlmayer, G. (2007). Bundesverfassungsrecht, Beck, Vienna, Austria, 771-775. Simply put, natural and legal persons as subjects seeking a specific legal protection must know in advance exactly which court will hear the case and which judge in that court (as a rule, exactly in order). Such consequences of the rule on the "right to a natural judge" also call into question some other Croatian domestic solutions (e.g. "moving" files from one court to another, computer "selecting" the competent appellate court, etc.), but here it is important to say that the *gesetzlicher Richter* described above must be equally familiar with civil and commercial law and criminal law.

[23] *Grundgesetz für die Bundesrepublik Deutschland* (*Grundgesetz*, 1949), Artikel 101.1. (*Verbot von Ausnahmgerichten*): "*(1) Ausnahmegerichte sind unzulässig. Niemand darf seinem gesetzlichen Richter entzogen werden.*"; freely translated: (Prohibition of extraordinary, extraordinary courts): "(1) Extraordinary (exceptional) courts are not permitted. No one may be deprived of his natural judge."

[24] *Österreichische Bundesverfassung* (*OB*, 1920), Artikel 83.2.: "*(2) Niemand darf seinem ordentlichen Richter entzogen werden.*"; freely translated: "(2) No one may be denied their regular judge."

Such a principle eliminates the appearance of "special" or *ad hoc* courts and judges, and in other words, citizens and legal entities must have the certainty that their case will be heard by a judge who is designated and provided for by law. What would the introduction, application and observance of such a principle mean in the Croatian judiciary? In concrete, the elimination of "annual work schedules" in courts (because all judges would have to do everything), and the schedules actually start from the division into civil and criminal judges. Cases in courts (at all levels) would be received in such a way that they come to the judge who is first in line at a moment. Same can apply to state attorneys who conduct investigation procedures.

Both civil and criminal matters require, at their very beginning, a clear legal diagnosis[25] that will either be confirmed or overturned by the end of the procedure. Such a diagnosis, however, is not possible if the jurisdiction provided for by law is not in the hands of a lawyer who is competent in the overall "court/judicial law". Indeed, the contrary (and now undoubtedly prevailing) situation is unconvincing when, in the context of the same factual event (e.g. a traffic accident), the criminal part is tried by one judge and the civil part by another.

Contrary to the point presented here of governing the entire "court/judicial law" as a "whole" and "synthesis" it is regulated in the Croatian Rules of Procedure of the Constitutional Court (art. 31. par. 1. item 4.)[26], where the judges of the Constitutional Court have secured for themselves (because the Rules of Procedure are not an act of the state) the right to request the opinion of a legal expert ("... scientific advisors of the Constitutional Court"). It is not legally coherent that the judges of the Constitutional Court, who are, according to Croatian Constitution[27] (art. 126. par. 1.), "prominent jurists", have the privilege popularly known as "joker calls" (and contrary to the millennial rule of *iura novit curia*) while the judges of first instance

[25] The first "legal diagnosis", especially in criminal proceedings, is very often of decisive importance for the final outcome of the proceedings. Just as in medicine it is extremely important whether the doctor in the emergency room has correctly identified what is going on (and this then enables treatment with a positive outcome), so in criminal law it is very often decisive whether the "essence of the matter" has been affected. In economic crime, this "essence" is usually very complex and can only be "discovered" by a legal expert who is familiar with "judicial law" as a synthesis of civil-commercial and criminal law.

[26] *Poslovnik Ustavnog suda Republike Hrvatske* (Rules of Procedure of the Constitutional Court of the Republic of Croatia), Narodne Novine, 181/03, 16/06, 30/08, 123/09, 63/10, 121/10, 19/13, 37/14, 2/15, art. 31.: "(1) *U ustavnosudskom postupku u kojem obnaša dužnost suca-izvjestitelja, sudac je ovlašten: ... 4. tražiti stručna mišljenja o pojedinim predmetima od znanstvenih savjetnika Ustavnog suda...*"

[27] *Ustav Republike Hrvatske* (The Constitution of the Republic of Croatia), Narodne Novine, 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14.

(usually municipal) courts, who are usually younger and less professionally experienced, do not have this opportunity. However, the "joker call" system is not actually possible in actual litigation (investigative or trial). Decisions must be made quickly, decisively and confidently. There is no time to turn to anyone who could possibly "help". The assumption of such (good) conduct is certainly a quality knowledge of "court/judicial law" as a whole of civil-commercial and criminal law.

Perhaps such an assumption is best reflected in the resolution of the "preliminary questions". Preliminary (prejudicial) questions are not factual but legal questions. Their knowledge is also affected by the maxim of *iura novit curia*. Where the issue is indeed a preliminary one, the civil or criminal judge has the option of "transferring" the matter to the competent (the "other") court and awaiting its decision; he may, however, resolve the matter himself, but this then applies only to the specific case: article 12. of the Croatian Civil Procedure Act (ZPP Act 1991) and article 18. of the Croatian Criminal Procedure Act (ZKP Act 2008).

ZPP[28] has a provision (art. 12. par. 1.)[29] that the civil court may resolve such an issue itself, unless "...unless otherwise provided for by special regulations." ZKP[30] does not have a similar provision (art. 18.)[31] but this rule is "implied" because it belongs to the general procedural rules. However, the real situation in practice, especially in cases of so-called economic crimes or, for example, litigation for compensation for damage, is quite different. In a trial in the area of economic crime (especially in criminal offences of abuse of office), one cannot wait for the decision of the "other" court to, for example, say whether the legal transaction by which a specific abuse of office was committed is valid. The criminal judge must decide this himself, because he is obliged to do so by a criminal law norm. We can follow a similar pattern in the

[28] *Zakon o parničnom postupku* (Civil Procedure Act), Narodne Novine, 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 96/08, 123/08, 57/11, 148/11, 25/13, 89/14, 70/19, 80/22, 114/22, 155/23.

[29] *ibidem*, article 12. par. 1: "*Kad odluka suda ovisi o prethodnom rješenju pitanja postoji li neko pravo ili pravni odnos, a o tom pitanju još nije donio odluku sud ili drugi nadležni organ (prethodno pitanje), sud može sam riješiti to pitanje ako posebnim propisima nije drugačije određeno. Odluka suda o prethodnom pitanju ima pravni učinak samo u parnici u kojoj je to pitanje riješeno. U parničnom postupku sud je u pogledu postojanja kaznenog djela i kaznene odgovornosti počinitelja vezan za pravomoćnu presudu kaznenog suda kojom se optuženik oglašava krivim.*"

[30] *Zakon o kaznenom postupku* (Criminal Procedure Act), Narodne novine 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 126/19, 130/20, 80/22, 36/24.

[31] *ibidem*, article 18.: "(1) *Ako primjena kaznenog zakona zavisi od prethodnog rješenja pravnog pitanja za čije je rješenje nadležan sud u kojem drugom postupku ili koje drugo državno tijelo, kazneni sud može sam riješiti to pitanje prema odredbama koje važe za dokazivanje u kaznenom postpuku. Rješenje tog pravnog pitanja od strane kaznenog suda ima učinak samo za kazneni predmet o kojem taj sud raspravlja.* (2) *Ako je o takvu prethodnom pitanju već donio odluku sud u kojem drugom postupku ili drugo državno tijelo, takva odluka ne veže kazneni sud što se tiče ocjene je li počinjeno određeno kazneno djelo.*"

civil area; for example, in damages proceedings for compensation for damage based on affective value (the value that "the thing had for the injured party") under article 1089. of the Croatian Civil Obligations Act (ZOO)[32], where the right to compensation exists only when the criminal offence was committed intentionally. Therefore, if criminal proceedings are already underway for such a criminal offence (which destroyed an object of affective value for the injured party) the civil judge will act wisely if he waits for the outcome of the criminal proceedings; it is not, however, a legal error if, despite criminal proceedings, he resolves the criminal issue himself as a preliminary issue (but this then only applies to civil proceedings and in principle it is not appropriate to do so because criminal proceedings may end differently). In cases where criminal proceedings have not been initiated or have not yet been initiated (and the civil judge cannot initiate it) or cannot be initiated (because, for example, the first defendant has died), the civil judge must resolve the preliminary issue himself and answer the important problem - whether the criminal offence was committed intentionally.

In such a situation and *vice versa* (and in all similar situations that often come or may come before) there is no need to prove how much a civil judge is obliged to know criminal law or how much a criminal judge is obliged to know civil-commercial law. It is evident that in this case criminal law is an integral part of the civil law norm. Quite similarly or almost identically to parts of criminal law (primarily in economic crimes), civil and commercial law is an integral part of the criminal law norm.

The problem certainly includes the resolution of "proprietary claims" (*imovinskopravni zahtjevi*) within the framework of criminal proceedings.[33] Criminal judges show a tendency to avoid adhesion civil within criminal proceedings. In this sense, the ZKP somehow works in their favour (article 153. par. 1.)[34] because criminal judges can remove the hearing and decision on adhesion issues if this would "significantly delay the criminal proceedings", that is, if the information from the criminal proceedings

[32] *Zakon o obveznim odnosima* (Civil Obligations Act), Narodne Novine, 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22, 155/23, article 1089. par. 4.: "(4) *Kad je stvar uništena ili oštećena kaznenim djelom učinjenim namjerno, sud može odrediti visinu naknade prema vrijednosti koju je stvar imala za oštećenika.*"

[33] Croatian ZKP incorrectly uses the term "proprietary claim" (*imovinskopravni zahtjev*). This is old terminology that should be replaced with the term "civil claim", which, as a more modern term, allows for the adhesion of litigation on non-proprietary issues (especially the protection of personality rights and the repair of non-proprietary damage).

[34] *Zakon o kaznenom postupku, op.cit.*, article 153. paragraph 1.: "(1) *Imovinskopravni zahtjev koji je nastao zbog počinjenja kaznenog djela raspravit će se na prijedlog oštećenika u kaznenom postupku, ako se time ne bi znatno odugovlačio taj postupak.*"

does not provide a reliable basis for the full or partial adoption of the civil claim, in which case they will refer the injured party to litigation (article 158. par. 3.)[35].

The situation from article 153.1. should be resolved by emphasizing more strongly the obligation to resolve civil issues in the context of criminal proceedings in an adhesion manner - so that adhesion proceedings are the rule and not the exception. In this sense, the injured party should be granted the right to appeal against the rejection of adhesion civil proceedings and the appellate court should have broader authority and more decisive practice in imposing adhesion proceedings. The legal situation envisaged by the provision of article 158.3. is similar: if there is no "reliable basis" for adoption (in whole or in part), the injured party's request should be rejected, as the civil court would also act in the same way in civil proceedings. The existing tendency to "escape" from the adhesion civil procedure within the framework of criminal proceedings is certainly also the result of the deficient knowledge of civil, commercial, labour, family and other parts of the total private law on the part of criminal judges. The consequences of this are clear: two procedures are conducted regarding the same factual event instead of resolving everything in one (criminal) procedure. The adhesion civil procedure and all its exposed repercussions in Croatian law actually strengthen the idea of a symbiosis of civil-commercial and criminal law in both the substantive and procedural segments.

The "tailwind" to the concept of "court-judicial law" expressed here is also given by the latest amendments to the ZPP (from 2022)[36] in the matter of so-called "illegal evidence"; the ZKP regulated this somewhat earlier[37] in article 10. of the Act.
The Constitution of the Republic of Croatia[38] (in article 29. paragraph 4.)[39] stipulates, quite generally, that "evidence obtained illegally cannot be used in court proceedings". The Croatian ZPP (article 32.), just like the ZKP (article 10.), stipulates that court decisions cannot be based on evidence obtained illegally ("illegal evidence"). The text of the Constitution, or rather the content of that text, is therefore repeated. However, in article 10. paragraph 2. of the ZKP there has been lists 4 situations in which evidence is "illegal", while the ZPP does not contain such

[35] *ibidem*, article 158. paragraph 3.: "(3) *Kad sud donese presudu kojom se okrivljenik oslobađa optužbe ili kojom se optužba odbija ili kad rješenjem obustavi kazneni postupak, uputit će oštećenika da imovinskopravni zahtjev može ostvarivati u parnici...*"
[36] *Zakon o izmjenama i dopunama Zakona o parničnom postupku*, Narodne Novine, 80/2022.
[37] *Zakon o izmjenama i dopunama Zakona o kaznenom postupku*, Narodne Novine, 143/12, 145/13.
[38] *Ustav Republike Hrvatske*, *op.cit*.
[39] *ibidem*, article 29. paragraph 4: "*Dokazi pribavljeni na nezakonit način ne mogu se uporabiti u sudskom postupku.*"

a provision. Does this mean that a civil judge can also "reach out" to these provisions of the Criminal Procedure Code, or that he or she should be familiar with them?

However, the Croatian Criminal Procedure Code (ZKP) does not contain a provision on the "depth" of the permissible interference with the relevant human (constitutional) rights, or to what extent it is possible to violate these rights and for the judge to use the evidence in a decision in a specific civil or court proceeding. Such a provision is, for example, has the German Constitution[40], which stipulates: 1. that the envisaged limitation of constitutional rights may apply generally to all situations and not only to individual cases (article 19. paragraph 1.) and 2. that in such a case the fundamental constitutional right may not be violated (*angetastet*) in its essential content (article 19. paragraph 2). It seems that this rule, as an important interpretative rule, could also apply to the Croatian constitutional legal system.

Finally, the described symbiosis or unity of civil-commercial and criminal law in Croatia and some EU member states is somewhat greater in criminal than in civil-commercial law, but it undoubtedly exists in both of these branches of law. Some modern developments in civil law (primarily the strong expansion of non-proprietary and personality rights) bring not only civil-commercial and criminal law into ever greater connection, but also bring both into a further connection with another branch of law - constitutional law.

Therefore, at the end of this chapter, it should be concluded that not only "theoretical-scientific" but also "everyday-practical" reasons speak in favour of the construction of the institute of "court-judicial law" as a synthesis, unity and whole of civil-commercial and criminal law.

4 Conclusion

The immediate reason for writing this paper was the content of the advertisement of the Croatian State Judicial Council on the election of judges of regular courts, especially higher courts (county courts, first and foremost, but also the Supreme Court of the Republic of Croatia). Namely, these advertisements explicitly state that a judge is being elected for the "civil department" or the "criminal department". This

[40] *Grundgesetz für die Bundesrepublik Deutschland, op.cit.*

is a more recent practice. Previously, this "specialization" was not mentioned in advertisements for the appointment of judges, so the division into civil and criminal judges was implemented tacitly and through the annual schedules of judges.

The tendency of division, therefore, not only persists but also strengthens in its practical manifestations. It goes without saying that the relevant Croatian laws (the Act on Courts[41], the Act on the State Judicial Council[42]) do not foresee such a thing. Admittedly, they do not defend it, but this does not mean that this practice is *praeter legem* good and should be continued. The science of law (which is not a tendency characteristic only of our circumstances) has long neglected the sociological-legal aspects of the judiciary and justice. Normative-legal analyses prevail, certainly the necessary ones, but the overall legal system will not go in the right direction if we neglect the due analyses of real developments in the world of law.

The proposed and presented analysis of the current state of the Croatian and some main EU member states legal system organization and the proposal for a change of understanding probably do not have much chance of success, at least not immediately or at least not so soon. Namely, the "opposite state" that has become a habit, and a firmly rooted habit, is too deep and too long-lasting. Anglo-American lawyers (and judges) do not recognize and do not know the existing division of "court or judicial law" into civil-commercial and criminal law and they also consider criminal proceedings to be a civil case (state vs. defendant). In Croatia and EU states (Euro-Continental legal circle), the existing division is also "encouraged" by the division within civilian law. "Mandatory law" is regulated, studied and judged sometimes as civil and sometimes as commercial law. From the example of the Croatian law - the law to be applied is one (ZOO), the courts are different, and the procedure is the same (ZPP). Therefore, the perspective of "court/judicial law" (*sudsko pravo*) is possible on a very "long stick"; there is a little chance that the construction of such a unique (understanding) law will even be initiated, let alone realized. But that is not a reason not to think about it (the synthesis of civil-commercial and criminal law), on the contrary.

[41] *Zakon o sudovima* (Act on Courts), Narodne Novine, 28/13, 33/15, 82/15, 82/16, 67/18, 126/19, 130/20, 21/22, 60/22, 16/23, 155/23, 36/24.
[42] *Zakon o Državnom sudbenom vijeću* (State Judicial Council Act), Narodne Novine, 116/10, 57/11, 130/11, 13/13, 28/13, 82/15, 67/18, 126/19, 80/22, 16/23, 83/23, 155/23.

In this paper, author have also put forward a thesis that certainly requires deeper analysis and verification - that, for example, in Croatia, the "USKOK" state attorney's office or the judiciary has the characteristics or at least some characteristics of "exceptional courts" ("specialized courts", "*ad hoc* courts", "extraordinary courts", *Ausnahmengerichte*). For the purposes of this paper, however, it is sufficient to state that the existence of such judicial bodies enhances (and certainly does not weaken) the division between "civilians" and "criminals" and even deepens the division between "criminals" themselves. If even a possible constitutional procedure for examining the constitutionality of the relevant "USKOK laws" in Croatia were to (still) withstand the constitutionality test before the Constitutional Court, the fact remains that, especially in civil and criminal proceedings of the highest level of social importance, "court/judicial law" should be applied as a whole - as a unique legal synthesis of civil-commercial and criminal law.

It should also be emphasized as very indicative that the idea of "court/judicial law" as an indivisible whole is already maturing in practice where numerous judges state that they do not have the necessary knowledge for that "mixed" disputes and need additional education. The construction of "court/judicial law" is therefore not just some distant de *lege ferenda* thought, but is already a clear practical problem. Another question is how to organize the "additional education" that the judges are talking about. Surely, it cannot be some kind of month-long course or something similar.

The basic message of this paper (the creation of "court-judicial law" but also the organization of courts so that judges are not divided into "civilians" and criminalists") certainly does not have a special chance of being immediately accepted. However, in the long term, Republic of Croatia and EU member states will certainly find itself in need of a stronger, perhaps even very radical, change to the entire legal system and then it would be worth seriously considering the issues raised by this paper. The current impotence of criminal courts in the area of economic crime will probably continue, perhaps to the point where the state, its citizens and economic life entities will no longer be able to tolerate it.

The concept of "synthesis" that the paper addresses is present at this moment in judicial and legal life at: 1) the level of undergraduate law studies, 2) the level of trainee and advisory internships of future judges and state attorneys and 3) the level of taking the bar exam (to some extent also at the level of smaller municipal courts

where, by the nature of the job, "everything" has to be done). The "separation" occurs at the level of larger municipal courts, at the level of county courts it is already in full "development" and then it follows judges and state attorneys until the end of their careers. In other words, when a judge or state attorney enters a higher level of legal decision-making, he or she must be either one or the other - either a civil or criminal judge. This should (attempt to) change.

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