



Criminal Protection of Environment-Organized Crime and Effective Regret

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	ABSTRACT
<p>2016 Research Leap/Inovatus Services Ltd. All rights reserved.</p> <p>DOI: 10.18775/jibrm.1849-8558.2015.55.3003 URL: http://dx.doi.org/10.18775/jibrm.1849-8558.2015.55.3003</p>	<p>This paper analyzes special criminal offences of environment endangering through national and international legislation. How social aspect is important in criminal law because of prevention of injury, legislator predicted provision of effective regret if person acts as individual perpetrator or as part of criminal organization. That is key reason why paper analyzes effective regret prescribed in Criminal Code of Croatia in Special part (Head protecting environment and Head protecting public order). Mostly, environment will be injured by act of individual, but nowadays, environment is valuable resource that enables to gain large profit and as such is aim of criminal organizations. Legislator punishes mostly stadium of environment endangering, so paper reflects nature of provisions against environment on possibility of effective regret (instrument of stopping injury of legal good (material completion of criminal offence against environment)). Paper analyzes also UN Palermo Convention and EU Framework Decision against organized crime, specially provisions about conspiracy (when exists no criminal organization) and criminal organization and on end their comparison with legislation of Croatia. De lege ferenda is noted that Framework Decision must incriminate conspiracy established for only one criminal offence, and not for only two or more, because one criminal offence can have characteristics of organized crime as well. Paper concludes that it is necessary to predict effective regret by more criminal offences of environment endangering because it represents best way of legal good protection. If person acts as part of criminal organization, it should be sufficient that content of effective regret presents certainly prevention of commission of criminal offence without disclosure of criminal organization because protection of legal good (environment) should have an advantage over punishment of perpetrator.</p>
<p>Keywords: <i>Criminal code, Effective regret, Environment, Organized crime</i></p>	

1. Introduction

Environmental protection has gained importance not only in national legislation but also on the international level. As Croatia is member of the European Union, and provisions in jurisdiction of the European Union are in accordance with international documents, we will analyze reflecting of the norms of EU law on the Croatian legislation. It is important to emphasize that concept of the environment must be understood in the broadest sense, and not limited in terms of older anthropocentric theory, on only so-called "human environment". Object of protection are also air, soil, water and sea, flora and fauna in the totality of their interaction so as cultural heritage as part of the environment created by man. Offenses against the environment are located in a special chapter in Special Part of Criminal Code in Croatia (further: CC). Criminal law is a subsidiary instrument for the protection of certain legal goods which is particularly evident when it comes to protecting the environment. If environment cannot be protected through administrative and financial provisions or other branches of law, as ultima ratio appear instruments of criminal law. Mentioned is special visible

through fragmentation of legal protection because criminal law protects environment only from the hardest form of threat or injury (Cvitanović in Novoselec et al., 2007, p. 269). Organized crime is significant because "usual" crime shows in more dangerous form when committed as a realization of the plan of organized crime, and those activities of organized crime present harder form then individual or even "regular" joint action (Derenčinović, 2001., p. 72). There are different definitions of organized crime but common characteristics of it are joint planning and execution of criminal acts in order to achieve profit or power, on the basis of division of labor, for a long or indefinite period involves more than two participants using specialized trade skills, using violence or other means of intimidation in connection with politicians, media, public administration, justice or the economy. Since the main target of organized crime is only profit, and saving no legal good, environment is also particularly affected legal good. Transition from abstract to concrete danger, and then injury, is most obvious while analyzing legal good of environment because legislator in Art.

214 of the CC predicts material completion (serious consequences) of many crimes against the environment.

How social aspect is important in criminal law to prevent injury of legal goods (material completion by criminal offences against environment), the legislator also foresees the possibility of effective regret with legal consequence of possibility of remit from punishment. This provision on one hand protects environment from severe consequences, because it has prime aim to protect legal goods, but also shows that legislator wants to affect mind of the offender. Theories about privileging offender who takes action of effective regret can be linked to theories about privileging voluntary abandonment (Vuletić, 2011, p. 5 - 31). Purpose of the privilege is reflected in the annulment of criminal intent because legal system must provide appropriate incentives that will motivate offender to withdraw. In this sense, the state opens to offender a back exit to escape from punishment. If the state refuses to give offender the opportunity to enjoy the privilege, it actually forces him to complete the work started, because if there is nothing he can get with withdraw, then with material completion of the initiated actions is nothing he can lose. Also, offenders' remorse gives hope that he will not do evil deeds in the future. Acting creditably, offender deserves "mercy" and "to be spared" from the sentence.

A relatively new concept, based on the principles of civil law was founded in 1987. by Herzberg. He sees privilege for withdraw in general legal principle that allows state to apply threat and that should not be activated if the offender with appropriately behavior fulfills his duty with correction of prior caused illegal condition. This author warns on cases in which offender alone reduces range of his unlawful conduct. Proper conduct of offender creates conflict between criminal justice, the principle of directed absolute prevention, and demand that state threat should weaken if it comes to compensation of previous behavior. It's up to legislator how to resolve this conflict. Some of the most important theories about the purpose of punishing are theory of specific and general deterrence and theory of balancing interests between the offender and the victim. Consequently, it is necessary to point out legal regulations of organized crime and environmental protection at European and national level. As the legislator in the Republic of Croatia prescribes punishment for an agreement to commit criminal offence (criminal offence that is subject of agreement must have possibility of punishing with imprisonment of more than three years) and criminal association (which may consist in organizing or conducting with criminal association), it was necessary to see and EU regulations because today's organized crime can be found everywhere where there is a tangible benefit, and environment as such is a valuable resource. For this reason, the paper refers primarily to specific offenses of environment endangering for which is provided "privilege" of possible effective regret.

2. Type of Criminal Offences

Criminal offences by which effective regret is prescribed as possible are special criminal offences of environment endangering (Art. 194. of CC The Discharge of Pollutants from the Vessel, Art. 195. of CC Endangering the Ozone Layer, Art. 196. of CC Endangering Environment with Waste, Art. 197. of CC Endangering the Environment with Facility, Art. 198. of CC Endangering the Environment with Radioactive Substances, Art. 199. of CC Endangering with Noise, Vibration or Non-ionizing Radiation and Art. 211. of CC Unlawful Exploitation of Mineral Resources). All mentioned criminal offences are delictum communium what means that everybody can be perpetrator (Novoselec, Bojanić, 2013, p. 136-137). They are also blanket criminal offences because their definition refers on legal acts beyond CC. It's completely reasonable because of complexity of this field of life and enormous procedural provisions about, for example, handling of hazardous substances. All this criminal offence can be committed with intent (because it's basic, regular and grave element of guilt) and negligence (that needs to be strictly prescribed in article of mentioned criminal offence). Exception is Art.199. of CC which can be committed only with intent what is reasonable if You read definition of this article because it encompasses awareness about noise and vibration so negligent is hard to imagine (Vukušić, 2016, p. 587).

Criminal offenses against environment in modern legislation are largely regulated as endangering crimes which do not require injury of a protected legal good (environment). For this criminal offenses is sufficient existence of risk of injury. In Croatia and Germany, legal theory talks about two groups of endangering criminal acts: concrete endangering and abstract endangering. By first (concrete endangerment), the court must find that there has been a threat to the protected object, the real danger of it's injury, while for the other (abstract endangering) is enough to prove offenders punishable endangering act. The key term is punishable act which is inherently dangerous and the punishment is prescribed when there has been no specific threat or injury (Kurtović Mišić, Krstulović Dragičević, 2014, p. 105). Austrian and German doctrine beyond these two categories also discusses transitional form of endangering criminal offenses - so-called- criminal offences of eligibility (Maršavelski, 2011, p. 292 - 293).

Its legal description contains action that must be suitable for harming a protected legal object or that could lead to its injury. This is actually a subclass of abstract endangering offenses because they don't have to perform a direct threat to the protected legal good. However, this type of offenses have similarities with abstract or concrete criminal offence of endangering. With abstract is when legal definition of criminal offence in the CC mentions possibility of performance effects (eg. "can lead to contamination", "may endanger the quality", "is similar to lead to damage" or "suitable to cause damage"). The similarity with concrete is when legal description of criminal

offence states that legal good is well compromised (e.g. "thereby jeopardizing" or "thereby endangers"). The offense under Art. 252. para. 1. of CC from 1997. provides punishment for management with waste in a way which endangers the quality of air, soil, water, watercourses or the sea within a wider area and to an extent which can worsen the conditions of life of humans or animals or endanger the existence of forests, plants and other vegetation. From the established facts is clear that in this case, the discharge of waste leads to a specific threat for plants and animal life (and even threat for human health, although it remained incompletely established in definition of this criminal offense), where the court must establish that the offender acted with intent because he was aware of it and agreed to it. In this case endangering was specifically created. Difficulty by distinguishing abstract and concrete danger with which in this case meets the court, and that is to some extent contributed because of the imperfect legal solution which prescribes the same penalty for both forms of threats, shows the good impact of the new regulation of criminal offense of Environment Endangering with Waste in the new CC (Maršavelski, 2011, p. 294). It is reasonable to abandon the distinction of abstract and concrete danger as two forms of this crime, because in some cases is indeed difficult to determine when abstract danger becomes concrete. Therefore, new CC prescribes only an abstract danger for special criminal offences of environment endangering in its pure form (without indicating danger). Exception is Art. 199.

3. Effective Regret

Accepting the dominant ecocentric model, prescribed environmental crimes are mostly fulfilled with creation of abstract danger caused with negligence, so legislator is trying to avoid sentencing wherever there is no special need for punishment and where it is beneficial for the environment. For this reason, Croatian legislator justified opening up the possibility of effective regret for crimes against the environment. It is necessary to distinguish completion of a criminal offense in the sense of accomplishment of definition of the criminal offense (formal completion) and the injury of legal goods (material completion) because after formal completion of the criminal offense, offender may achieve qualifying features and there is a possibility of involvement of other participants in the commission of an offense (Wessels, Beulke, 2010, p. 221). Criminal work is completed in a formal sense when it realized all its features and formal completion is in principle sufficient that the offense is considered complete (Kurtović Mišić, Krstulović Dragičević, 2014, p. 106). If repairment of state caused by the condition (formal completion) occurs in a timely manner, voluntarily and in full, then effective regret eliminates the consequences of the crime. Effective regret exists when offender after formal completion prevented material completion of criminal offence (Kurtović Mišić, Krstulović Dragičević, 2014, p. 154). It is necessary to see whether effective regret consists in preventing the material completion or attempt to prevent the material completion. CC by effective regret mostly

demands prevention of material completion of a criminal offense and attempt to prevent material completion is not sufficient. Although, Croatian legislator considered sufficient for some crimes even act of attempt to prevent / eliminate consequences of acts. CC in Art. 102. (Terrorist Organization) and in Art. 328. (Criminal Association) requires prevention of the criminal offense or in the alternative, allows the application of effective regret on members of the association if they detected criminal association before in its composition or for it commits criminal offense. Risk of criminal offense material completion prevention, CC lays on competent authorities to who detection of the criminal association was reported. Theoretically, action of effective regret is not a reason to reduce the sentence, but to remiss of penalties. In the area of environmental crime is in many cases desirable and recommend to take effective regret to reduce the risk of a criminal conviction. Then relationship between the offender and victim will be primary only seen through civil proceedings.

The provisions of effective regret are rarely applied. Those provisions present more desire of the legislator than real practice and seek the attention of the possible offenders because protection of legal good is more important than criminal punishment of them. (Busch, Iburg, 2002, p. 33) It can therefore be concluded that effective regret exists when is caused necessary causal series which has final aim of preventing material completion (Kottmann, 2010, p. 4). Attempting to prevent material completion of criminal offence can occur in two forms. The first refers on the situation when offense is not materially completed regardless of the actions of the perpetrator ("noncausal effective regret"). Another form refers on the situation when the criminal offense despite effort of perpetrator to prevent material completion still was completed (failed effective regret). By environmental crimes material completion must be prevented in full. In Special Part of CC in the Head of environmental crimes, legislator predicted effective regret in Art. 213. so court has possibility of remission of punishment for the offender of a criminal offense under Art. 193., Art. 194., Art. 196., Art. 197., and Art. 198. of the CC who before the onset of severe consequences voluntarily eliminates danger or condition that he caused. Here legislator requires prevention of material completion so that attempt to prevent material completion has no legal effect in terms of effective regret.

According to the text of the CC, effective regret can be applied to crimes against environment that are committed with negligence as Art. 213. of the CC did not limit its application only on prescribed criminal offences that can be completed with intention. Taking into account the legal nature of specific offenses against the environment endangering which are in the paper analyzed and those offenses by which effective regret is prescribed, according to the Commentary of CC Working Group, it is prescribed only for criminal offences of abstract endangering (Turković et al., 2013, p. 269.). By criminal offences of abstract endangering exists time interval between

endangerment and injury, or more precisely, of serious consequences, so the legislator has enabled to perpetrator effective regret at that time. Effective regret is by nature risky operation because criminal offence is already formally completed. In general, offender must personally take action of effective regret what requires Art. 213. of CC. An exception may be granted and active action of effective regret can be taken by third person but in the name of perpetrator (e.g. legal persons). Material completion (damages) must be entirely prevented as CC for crimes against environment requires removal of condition that offender caused so serious consequences from Art. 214 of the CC won't happen, since they represent material completion of the criminal offense. After their happening, effective regret isn't possible.

4. Voluntary Abandonment

The offense must not be formally completed in order to be possible to apply provisions of voluntary abandonment, so the voluntary abandonment represents reduction of criminal guilt and significantly annulment of criminal evil than effective regret. Only logical solution is to prescribe significant legal effects to the voluntary abandonment than to effective regret (Vuletić, 2011, p. 234). Voluntary abandonment was known in Roman law, because by some criminal offences was predicted remit of punishment. We need to take into account that Roman law didn't know General and Special part of CC and uncompleted crime usually wasn't punishable. Development of attempt and voluntary abandonment starts with glosators and postglosators. They formed term of attempt and institute of voluntary abandonment that wasn't punishable (Vuletić, 2011, p. 71). CC of Croatia prescribes possibility of remit of punishment if perpetrator acts with voluntary abandonment.

Possibility of it, must be seen through definition of completed and uncompleted attempt, because first demands active prevention of consequence, and uncompleted attempt demands passivity of perpetrator. Voluntary abandonment of inappropriate attempt is possible till the perpetrator isn't aware of impossibility. If criminal offence is formally completed, voluntary abandonment isn't possible. In that case we need to analyze effective regret. Voluntary abandonment is prescribed in General part of CC and effective regret is prescribed in Special part of CC. Effective regret understands situation when perpetrator completed formally his criminal offence so there is possibility of preventing the consequence by stopping/or taking activity before material completion of criminal offense. This means that effective regret encompasses formal completion of criminal offense and perpetrator is trying to mitigate the damage caused. At voluntary abandonment caused damage is smaller and criminal offense is stopped in stadium of attempt. Thus, legally equation of these two institutes from the aspect of legal effects is questioned (Vukušić, 2016, p. 599). Preparatory actions against environment are described as completed crimes of abstract endangering, and because of it, special provision of effective regret are prescribed for these offences. When

perpetrator commits preparatory action, some criminal offences are formally completed, so it was inevitable to prescribe effective regret for this criminal offences of environment endangering. After criminal offense is completed, act of a offender needs to be directed on reduction or elimination of consequences of committed criminal offence. Time when perpetrator takes action of voluntary abandonment is earlier than when he takes action of effective regret. Effective regret has legal consequences ex post. Basic difference is that voluntary abandonment eliminates criminal characteristic of attempt and by effective regret criminal offence is formally completed.

5. Organized Crime

Everything mentioned earlier refers on situation if perpetration isn't committed as part of organized crime. How environment is tangible benefit, criminal offences against environment can be committed as product of organized crime. Most important international documents on this topic are Convention on Transnational Organized Crime, so called Palermo Convention of UN from 2000. and EU Council Framework Decision 2008/841/JHA from 2008. on the fight against organized crime (Framework Decision). Their provisions are demanding to prescribe and to punish conspiracy to commit crime and establishment of criminal organization. (Kurtović Mišić, 2015). Framework Decision aims to establish harmonization of regulations between EU and UN documents, with particular emphasis on organized crime. (Mitsilegas, 2011, p. 5). It is often noted that Framework Decision because of mentioned regulation could lead to excessive criminalization (Mitsilegas, 2011, p. 5).

According to Art. 2. of Framework Decision, punishable is conduct of any person consisting in an agreement on activity with one or more persons that should be pursued, which if carried out, would amount to the commission of offences referred to in Art. 1, even if that person does not take part in the actual execution of the activity (Fajardo, 2015, p. 12 – 15). Definition of criminal organization can be find in Art. 1 of Framework Decision and encompass structured association, established over a period of time, of more than two persons acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or more serious penalty, to obtain, directly or indirectly, a financial or other material benefit. The above mentioned shows that Framework Decision provides the possibility of punishing even if that person (perpetrator of conspiracy) does not take part in the actual execution of the activity. It would still be better if there is a technical difference in regulation, so if a person takes part in the conspiracy, and then commits a crime, there is no criminal liability for the conspiracy. However, terminology and those provisions used, enabled concurrence between agreement to commit criminal offense (conspiracy, preparatory action) and crime committed (which is the subject of the agreement), taking into account the different practices in the legal systems of the EU. Prescribing criminal agreement (conspiracy), as criminal

offense *sui generis*, is covered punishment of action when there is no criminal organization, and criminal offense isn't committed. Institute of conspiracy is favorite for the plaintiff because of its vagueness, the inversion of the evidentiary burden to the detriment of the defendant and the exceptions to the principle of immediacy in the presentation of evidence in common law (Bojanić, Derenčinović, Horvatić, Krapac, Seršić, 2011, p. 59 – 60). The difference of agreement to commit crime (conspiracy) according to the Framework Decision, in relation to participation in a criminal organization is that criminal organization exists if it was established for a long time. In addition, it is necessary participation of at least three people and the existence of certain structure. Aim of the Framework Decision is to establish a higher degree of harmonization and narrow criminalization of participation in a criminal organization and thereby establish legal certainty.

In particular, Framework Decision wants to distinguish participation in a criminal organization which is organized by the hierarchy from other organizations that have no vertical structure and acting as a network (Mitsilegas, 2011, p. 14). Framework Decision refers on criminal offenses - plural, so it requires the existence of an agreement to commit not only one but two and more criminal offenses. However, EU state legislation prescribes punishment of agreement to commit only one criminal offense (Vukušić, 2014, p. 53 – 108) and if there is agreement to commit more crimes, it represents a concurrence of several offenses of agreement or it presents criminal offense arising out of the same transaction (Art. 52 of CC of Croatia) if there is possibility of such legal construction. It is logical that Framework Decision demands conspiracy or execution of more crimes because it regulates action against organized crime, which typically involves committing more crimes. But one should not ignore that it is sometimes possible to establish an agreement for committing one serious offense, that will provide financial or material benefit to offenders for a long time, and such action should not be deprived from the characteristic of organized crime. Therefore, the solution of CC in Croatia when conspiracy or criminal association is possible if it was established for only one offense, more correct.

Framework Decision seeks to criminalize conspiracy to commit offenses for which is prescribed a punishment of imprisonment for at least four years (De Moor, Vermeulen, 2010, p. 74). In legislation of Croatia, those criminal offenses are ones for which is prescribed a prison sentence longer than three years (Derenčinović, 2004., p. 31 – 32) This provision in CC is commendable because it prescribes punishment of agreement on criminal offense for which offender can be punished on prison sentence longer than three years. The special minimum of four years (according to Framework Decision) in prison in the CC of Republic of Croatia is not known. Punishing conspiracy, (Art.327. of the CC) are covered offenses for which the special minimum is less than three years as indicated by their specific maximum exceeding three years, and are very dangerous. Thus

formulated provision is adhered to the principle *poenalia sunt restringenda*.

The question is whether the agreement must include the location, the time of commission and other modalities of the commission. The answer to this question depends on the fact whether these elements are a constituent part of the definition of criminal offense. If they are, then members of the agreement must be agreed and on these elements. But if such circumstances, which are part of the definition of the criminal offense, does not exist at the time of agreement, it is necessary to see if mutual agreement is dependent on this circumstances (Maljević, 2011, p. 177). In particular, is noted that the agreement to commit (conspiracy) in international documents is established on the model of the common law tradition. From the foregoing it is evident that in Croatia exists criminalization only of those who agree to commit a criminal offense which requires that members of an agreement are co-perpetrators, and not participants, agreed to the offense.

We believe that there is a striking lack which is reflected on conduct of more instigators who reach an agreement that will together encourage other person to commit the offense by which the agreement is punishable. Instigator of a criminal offense is often punished more severe than the main perpetrators because he is criminal creator of future commission of criminal offense so conspiracy to instigate potential perpetrator should be punished. According to Art. 328. par. 4. CC of Croatia, criminal association exists when it consists of at least three persons who have joined together with the common purpose of committing one or more criminal offenses for which person can be condemned on a prison sentence of three years or more, and that does not include an association that people make accidentally connected for directly committing one offense. Provision of Art. 328. para. 2. of CC provide criminalization of any form of participation in criminal association that will be legal characterized as perpetration. All mentioned criminal offences of environment endangering are covered with definition of criminal association so they can present organized crime.

Every action that aims to gain profit within criminal organization will endanger environment and in accordance with definition of criminal offences in CC can be punished person/criminal organization that in their criminal action releases, places or drops the amount of substances or ionizing radiation into air, soil, subsoil, water or sea; or who discharges pollutants to the marine facility in the sea or to the vessel in the inland waters; or who manufactures, imports, exports, places on the market or uses substances that deplete the ozone layer; or in one or more apparently related items makes unauthorized traffic management in an amount greater than the minor; or who handles place in which a dangerous substance are procedure or where they are stored or used if they can outside permanent or significantly compromise the quality of air, soil, subsoil, water or the sea, or significantly or the wider area of compromise

animals, plants or fungi, or threaten the life or health; who processes, handles, uses, possesses, stores, transports, imports, exports or disposes nuclear materials or other hazardous radioactive substances a longer period or to a greater degree jeopardize the quality of air, soil, subsoil, water or the sea, or significantly in wide area endangers animals, plants or fungi, communities of animals, plants or fungi, or threatens the life or health, or exploitation of mineral resources and thereby causes substantial damage. Framework Decision allowed Member States to continue to apply its national legislation without obligation to introduce the concept of criminal organization. So national legislation will continue to act according to the rules of participation and preparatory actions in the concrete offense. In the EU Member States there are still three modules of prescribing culpability for action in a criminal group (as a separate criminal offense, through the provision of perpetration and participation in a criminal act which is / or should be committed or as conspiracy in common law) (Bakowski, 2013, p. 2).

It is therefore necessary to establish a consensus between EU Member States because of the importance of facilitating harmonization and cooperation with regard to these crimes. Art. 327. para. 2. of the CC in Croatia provides possibility of effective regret for offender who participated in the establishment of a conspiracy, if he detects an agreement, while Art. 328. para. 2. of the CC regulates effective regret within criminal association only if member of association timely disclosures future commission of criminal offenses or detects criminal association before in its composition or for association commits a crime. Mentioned regulation of effective regret in the Art. 327. para. 2. of the CC and Art. 328. para. 3. of the CC are in accordance with Art. 4. of the Framework Decision which lists special circumstances that may reduce penalties for offender or that could offender exempt from penalties. Namely, each Member State may take necessary measures to ensure that penalties referred to in Art. 3 of Framework Decision may be reduced or that the offender may be exempted from penalties if he, for example:

- (a) renounces criminal activity and
- (b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:
 - (i) prevent, end or mitigate the effects of the offence;
 - (ii) identify or bring to justice the other offenders;
 - (iii) find evidence;
 - (iv) deprive the criminal organization of illicit resources or of the proceeds of its criminal activities;
 - (v) prevent further offences referred to in Art. 2. from being committed.

Here is evident that Framework Decision leaves to legislature of Member States legal institute which will be used in achieving aim how enumerated circumstances should reduce punishment

or exempt from punishment. Therefore, we believe that by criminal law of Croatia, enumerated circumstances in the Framework Decision, which are not related to the prevention of material completion of the criminal offence should be analyzed through mitigation of punishment or remission of punishment in sentencing particular offender. Legislator in Croatia wants to put the knowledge that it is more important to prevent commission of the offense, which is the subject of an agreement or a criminal organization, than ex post punishment of offenders. Therefore he provides effective regret.

6. Conclusion

At effective regret offender has changed his initial attitude, but criminal offence is formally completed and offender can only possibly mitigate its consequences. Here offender can no longer prevent the breach of the protected legal good (but may affect that injury is to a lesser degree). By voluntary abandonment criminal offence isn't formally completed. Therefore, the court, in spite of the same legal effects for voluntary abandonment and effective regret, should take more attention when sentencing, which will depend on particular facts. Although Art. 327. para. 2. of the CC and Art. 328. para. 3. of the CC for the existence of effective regret require disclosure of made agreement, as well as the Framework Decision (... (b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain...), it would be useful to prescribe effective regret by conspiracy, even if the member of the agreement do not disclose the agreement but certainly prevents commission of the agreed offense.

This is a situation where member of conspiracy prevents further commission of crime (for example, prevent the entry into the punishable criminal stadium). It should be noted that the institute of effective regret is aimed to prevent material completion of criminal offence which is sometimes more important than punishment of the offender. Indeed, if one member prevents further activities of other members of the agreement, there is still no guarantee that others won't continue without him, so request of Art. 327. para. 2. of the CC to disclose agreement in that case shows as justified. Even by equal legal effect of voluntary abandonment and effective regret, it cannot be ignored that the optional remission from punishment gives judge possibility to punish as for the completed offense, unlimited mitigation of sentence and ultimately remission of punishment. Therefore, the legislator in Croatia used a better legal term for the legal effects of effective regret than German legislator. German CC prescribes different legal effects for effective regret depending on criminal offence (the possibility of remission of punishment, the possibility to mitigate punishment). Justification of enumerating different legal effects can only be right when CC with different forms of commission of concrete criminal offence links different legal effects of effective regret. But even in that case, it is unnecessary burden of the legal text. Neither legal solution in CC of Austria is not justified under which the offender who has taken action of effective regret cannot be

punished. This prevents court to assess all the circumstances of the offense (a form of guilt with which the crime was formally completed, the initiative, the manner of committing) and in accordance with the specific facts determine penalties for the perpetrators. In comparative law, on other hand, is commendable provision that prescribes "noncausal effective regret" after formal completion of the criminal offence. Therefore, the legislator in Croatia should prescribe effective regret and when the offender voluntarily and with effort tries to avoid materially completion (when he tried to avert danger by environmental crimes) and material completion of criminal offence does not occur, regardless of his actions. This possibility is a minimal concession to the offender if one takes into account that legislator in CC for crimes of Terrorist Organizations and Criminal Organization provides application of effective regret, even when there has been a material completion of the crime, if the perpetrator discovered information about the existence of the association to the competent authorities.

"Noncausal effective regret" in CC of Croatia can truly be considered as circumstance that will lead to penalty be closer to special minimum of criminal offence, but is it always appropriate when offense is not materially completed and the offender has honestly and laboriously tried to prevent the material completion? There is a question whether nonprescription of effective regret for offense of Endangering the Ozone Layer is justified. This is probably because the legislator material completion of criminal offense views through Art. 214. of the CC (appearance of serious consequences for the environment). The fact is that in spite of today's technology it isn't easy for the court, with the help of court experts, to determine what action to which extent damaged the ozone layer. There is similar situation with the criminal offense of Endangering with Noise, Vibrations or Non-ionizing Radiation. If the material completion of criminal offenses of endangering the environment is seen through the serious consequences in accordance with Art. 213. of the CC, then effective regret should be prescribed for this criminal offence because serious consequences of this crime, or materially completion of this criminal offence is punishable through Art. 214 of the CC. On the end we can conclude the significance to distinguish "regular" from "organized" perpetration because of importance to apply provisions of effective regret prescribed in Art. 213. or Art. 327. And 328. of CC in Croatia.

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