Paragraph two defines the unlawful search of a dwelling or premises. Such a criminal offence may be committed by anyone. The criminal offence is considered to be an aggravated offence under paragraph three when it is committed by an official by abusing their office or official duties.

The unlawful character of the act is excluded only when a person has the rightful occupant's permission or a lawful warrant to enter and search a dwelling or other indoor premises [3].

It has long been known that criminal law is the last and the least appropriate means of preventing and suppressing dangerous acts. Prevention of crimes by other means rather than by applying criminal law is much more reasonable and economical. This is all the more true as regards privacy protection, as the use of the means of criminal law becomes relevant only after a serious violation of privacy has already taken place, i.e. in the cases where the legal good protected under criminal law has already been harmed. Despite the undisputable advantages of preventing crimes, it is not possible to waive the punishment of the perpetrators, especially in cases where there are serious encroachments on privacy.

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Krajnik Jan,
University of Ljubljana, Slovenia
Korošec Damjan, Ph.D., full professor of criminal law,
University of Ljubljana, Slovenia

POTENTIAL ENDANGERMENT OFFENCES: AN OLD BUT NEWLY DISCOVERED CONCEPT

Slovenian criminal legal theory generally distinguishes between two types of criminal offences of endangerment: concrete and abstract endangerment offences (in German: *konkrete* and *abstrakte Gefährdungsdelikte*) [1]. The difference between the two is mainly in the intensity of the danger, caused by

the perpetrator's actions to a legally protected good (interest). *Concrete endangerment offences* require actual danger, which is imminent and directly threatens to escalate into harming a legally protected good. Concrete danger must always be established by the judge, taking into account all the circumstances of each individual case. On the other hand, criminality of *abstract endangerment offences* does not derive from the actual danger, but from the fact that certain conduct typically causes general danger to a legally protected good and is therefore criminalised regardless of whether the actual danger actually occurs. Abstract danger is not directly established by the judge in each individual case, but is actually established earlier – by the legislature when deciding, what dangerous conduct to criminalise. It represents the legislature's motive for criminalisation. When the judge establishes an existence of the perpetrator's dangerous conduct, abstract danger as a consequence is automatically given.

Recently, a new category of endangerment offences, called *potential endangerment offences*, has attracted attention in Slovenian criminal law. It has been known in German criminal legal theory for decades, but ignored in Slovenian criminal law until very recently, when it attracted (political) interest by the Supreme Court of Slovenia.

The notion of potential endangerment offence was introduced into criminal legal discourse by the famous German scholar Horst Schröder, who argued that there were certain offences in *Strafgesetzbuch*, that contained a mixture of abstract and concrete elements and could, therefore, be classified in neither concrete not abstract endangerment offences, but actually constituted a separate subcategory of endangerment offences. Here, the assessment of the danger, caused by the perpetrator's actions, is not made by the legislature but by the judge (concrete element), however, in order to make such an assessment, the judge cannot take into account all the circumstances of an individual case, but can only declare the perpetrator's actions dangerous, if it is typically capable (in German: *geeignet*) of causing harm to a legally protected good (abstract element) [2, p. 522]. Typical capability of the perpetrator's actions must be based on common experience and a typical course of events. The judge can, therefore, consider only typical facts of the individual case while ignoring atypical facts, even when they actually existed and were proved to have occurred. The assessment of capability is *ex ante* – only the facts, that were known at the time of committing the offence, are relevant. Facts, that become known later (*ex post*), must not be taken into account, since that would already constitute the assessment of actual, concrete danger.

This concept is known under different names in German academic literature, namely: *potentielle Gefährdungsdelikte*, *abstrakt-konkrete Gefährdungsdelikte* and *Eignungsdelikte*. The concept of potential endangerment offences, although partially severely criticised, became widely

accepted in German criminal legal theory and is referenced in almost all major commentaries of *Strafgesetzbuch*.

Schröder's argumentation was most notably criticised by another famous German scholar, Wilhelm Gallas, who argued that Schröder's understanding of abstract endangerment offences was too narrow. Gallas believed that it was irrelevant, whether abstract danger of the perpetrator's actions was determined by the legislature or established by the judge in each individual case [3, p. 174–175]. Therefore, potential endangerment offences, in his view, do not constitute a separate subcategory of endangerment offences that combine abstract and concrete elements, but fall into the category of abstract endangerment offences. The only difference with "pure" abstract endangerment offences is that it is not the legislature but the judge who assesses the abstract danger. The view, that potential endangerment offences constitute a special (sub)type of abstract endangerment offences, is prevalent in today's literature as well. It is perhaps worth mentioning, that Schröder's invention is accepted by the renowned criminal legal scholar Roxin, while Jescheck and Weigend, on the other hand, seem to be less enthusiastic about the concept.

In German-speaking countries, the potential endangerment offences are typically recognised by the word "*geeignet*", meaning capable, adequate. A typical phrasing of such an offence is: "Whoever [acts] in a way, that is *capable* of [causing a certain consequence], shall be sentenced to […]." In Slovenia, such a phrasing cannot be found in the Criminal Code due to stylistic incorrectness, however, a different, but equivalent wording exists: "Whoever [acts] in a way, that *can* [cause a certain consequence], shall be sentenced to […]." The word "*can*" (in Slovenian: *lahko*) represents an important indication that a certain offence might be a potential endangerment offence.

In 2019, the Supreme Court of Slovenia recognised potential endangerment offences for the first time [4]. This opportunity arose in relation to an (politically, at least at that time, highly controversial) offence of *Public incitement of hatred, violence or intolerance* (Article 297 of the Criminal Code), which resembles the offence from Article 130 of the German *Strafgesetzbuch*, also recognised as a potential endangerment offence. The Slovenian version reads as follows: "Whoever publicly incites or stirs up hatred, violence or intolerance […] and commits an act in a manner that *can* jeopardise or disturb public order and peace […]." The Supreme Court emphasised in its judgment that concrete danger to public order and peace is not required and that abstract danger does not suffice. Perpetrator's act must be *capable* of causing a concrete danger to public order and peace.

It is worth noting that this interpretation of the Supreme Court was also target of some criticism, especially in the light of the principle of legality and specifically one of its elements – that the offence must be clearly determined and defined in law (*lex certa*). Critics argue that this type of offences damages

the determinacy and legal predictability, since it is only, when the judge makes an assessment, whether an action was or was not capable of harming a legally protected good (interest), that the perpetrator can know for sure of his or her criminality. The new category of crime was further declared questionable from the standpoint of the traditional theoretical system of (inadequate) attempt.

Although only one offence from the Slovenian Criminal Code has been identified in case-law as a potential endangerment offence as of yet, there seem to be some others, waiting to be discovered and affirmed. In this context, some interesting developments are expected in the upcoming years.

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Mozgawa Marek, Dr hab., Prof.,
Maria Curie-Sklodowska University in Lublin, Poland

CLASSIFICATION OF CRIMES AGAINST FREEDOM IN POLISH PENAL CODES

In the Polish Penal Code of 1932, Chapter XXXVI "Offences against freedom" contained only five types of offences: deprivation of liberty (Article 248), slave trafficking (Article 249), punishable threat (Article 250), extortion (Article 251) and home intrusion, known as violation of domestic peace (Article 252). In general, the object of legal protection in the whole above-mentioned group of offences was personal freedom of an individual, which he or she enjoyed within the legal order in force within society at that time [1]. It was stated that freedom can be understood in two ways: a) as physical freedom, freedom of movement, to move from place to place; b) as moral freedom, freedom to dispose of one's goods, to exercise or not to exercise one's rights, to undertake one action or another [2]. However, in both of the above-mentioned cases, personal freedom can only be the object of the offence if the criminal conduct is directed against it. Thus, human will (as a manifestation of freedom) only enjoys protection if it is in conformity with the legal order and only concerns those goods of a person which the person can freely dispose of. If, on the other hand, there was a connection between the infringement of such a