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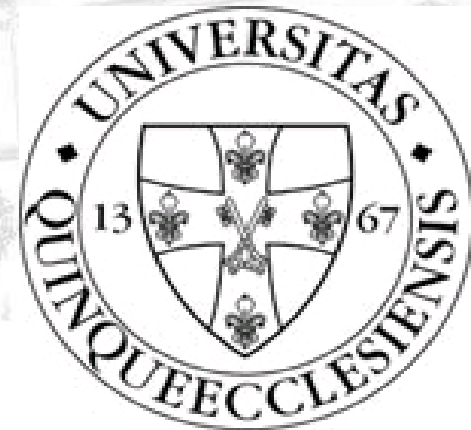


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Crimes of Omission and the Role of the Guarantor in Croatian Criminal Law

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CONTEMPORARY LEGAL CHALLENGES:

EU – HUNGARY – CROATIA

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GUARANTOR

A **guarantor** is a person who is legally obligated to avert the occurrence of a result .

a) **legally regulated inauthentic crimes of omission** –

the law determines the guarantor in the legal definition of the crime

b) **legally non regulated inauthentic crimes of omission** - Provision of Article, 25 Section 2 of the Croatian Criminal Code

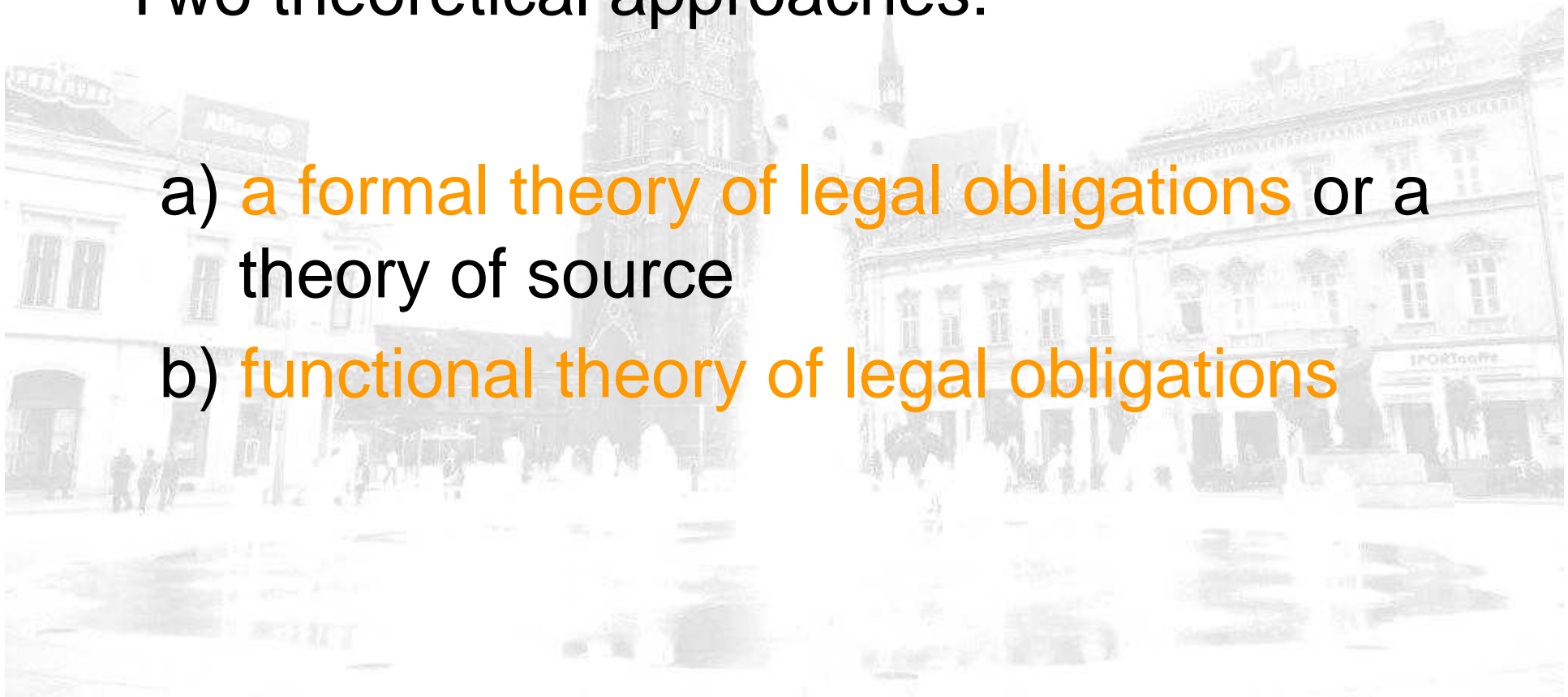
Article 25, Section 2 Croatian Criminal Code

A criminal offense is committed by omission when the perpetrator who is legally obligated to avert the consequences of a criminal offense defined by law, fails to do so, and such a failure to act is tantamount in its effect and significance to the perpetration of such an offense by an act.

The provision requires LEGAL obligation of the person, but it does not explain when the obligation exists.

Two theoretical approaches:

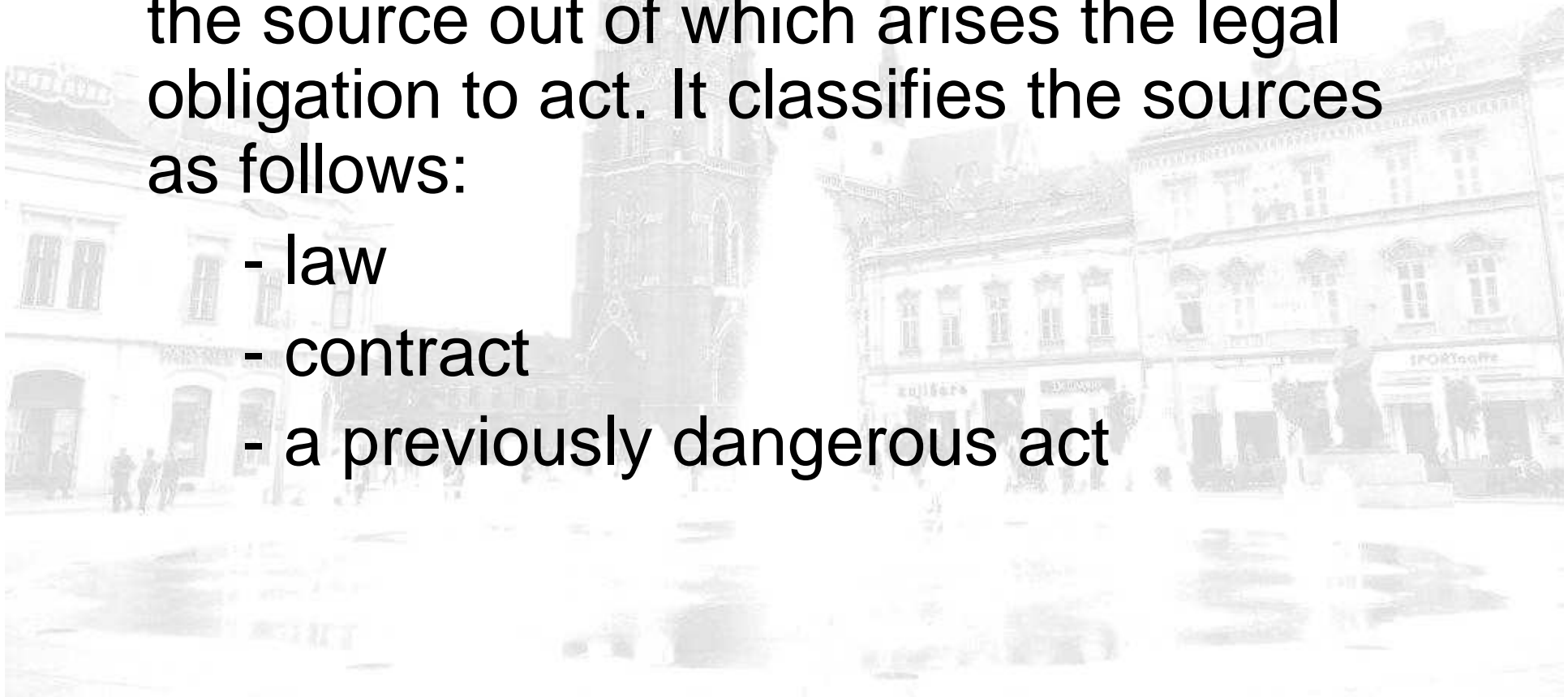
- a) a formal theory of legal obligations or a theory of source
- b) functional theory of legal obligations



A formal theory of legal obligations

The formal theory of legal obligations used the source out of which arises the legal obligation to act. It classifies the sources as follows:

- law
- contract
- a previously dangerous act



A functional theory of legal obligations

As a more recent theory, it defines a guarantor's legal obligation from a materialistic point of view. It takes into account the guarantor's capacity in relation to legal goods. According to this theory the guarantor's obligations are :

- protection of certain legal goods
- obligation to supervise sources of danger

In Croatian criminal law both theories have been accepted. Thus, the guarantor's obligations are classified as follows:

- obligation to protect certain legal goods
- obligation to supervise sources of danger



OBLIGATION TO PROTECT LEGAL GOODS

A person is obligated to ensure protection of certain legal goods. In this group there are three subgroups:

- a) obligation to protect based on natural relationship
- b) obligation to protect based on life community
- c) obligation to protect based on voluntary commitment

Obligation to protect based on natural relationship

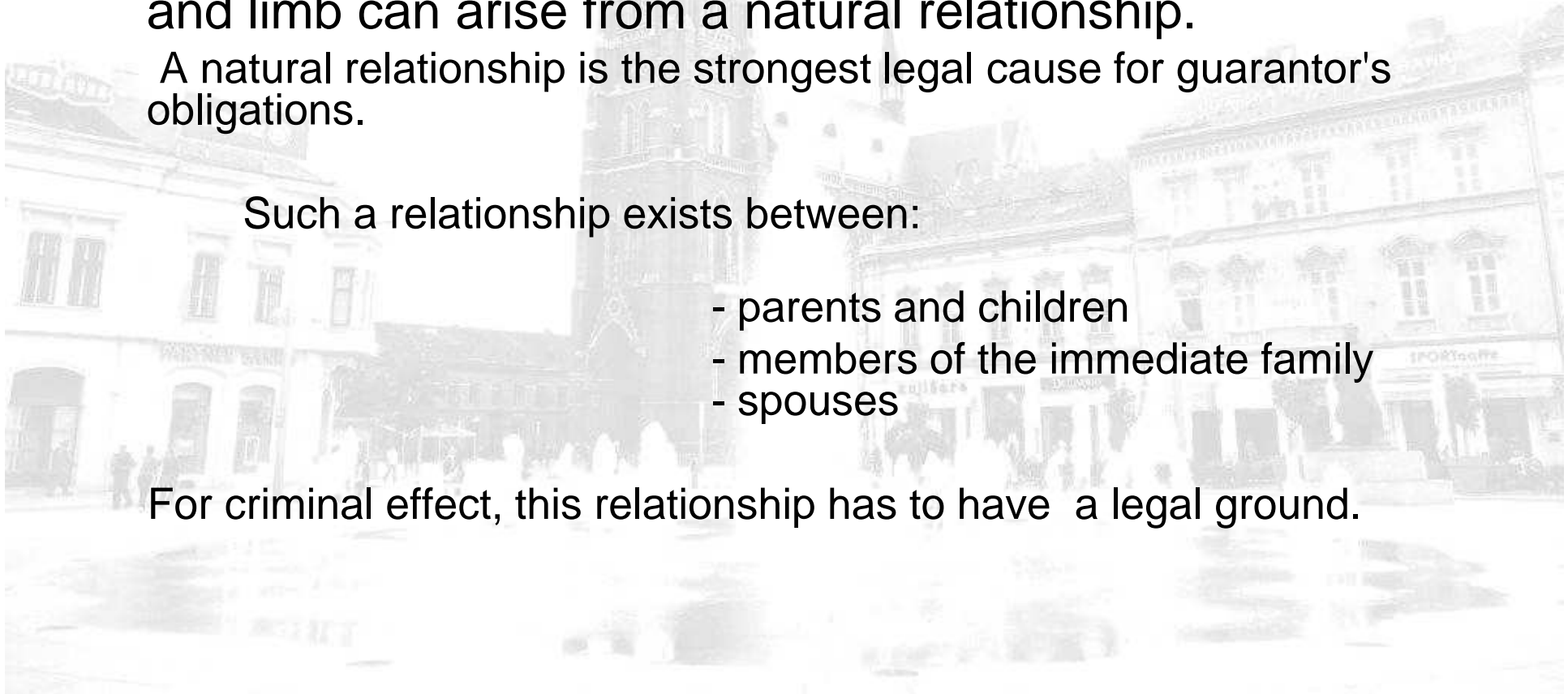
The obligation to protect certain legal goods such as life and limb can arise from a natural relationship.

A natural relationship is the strongest legal cause for guarantor's obligations.

Such a relationship exists between:

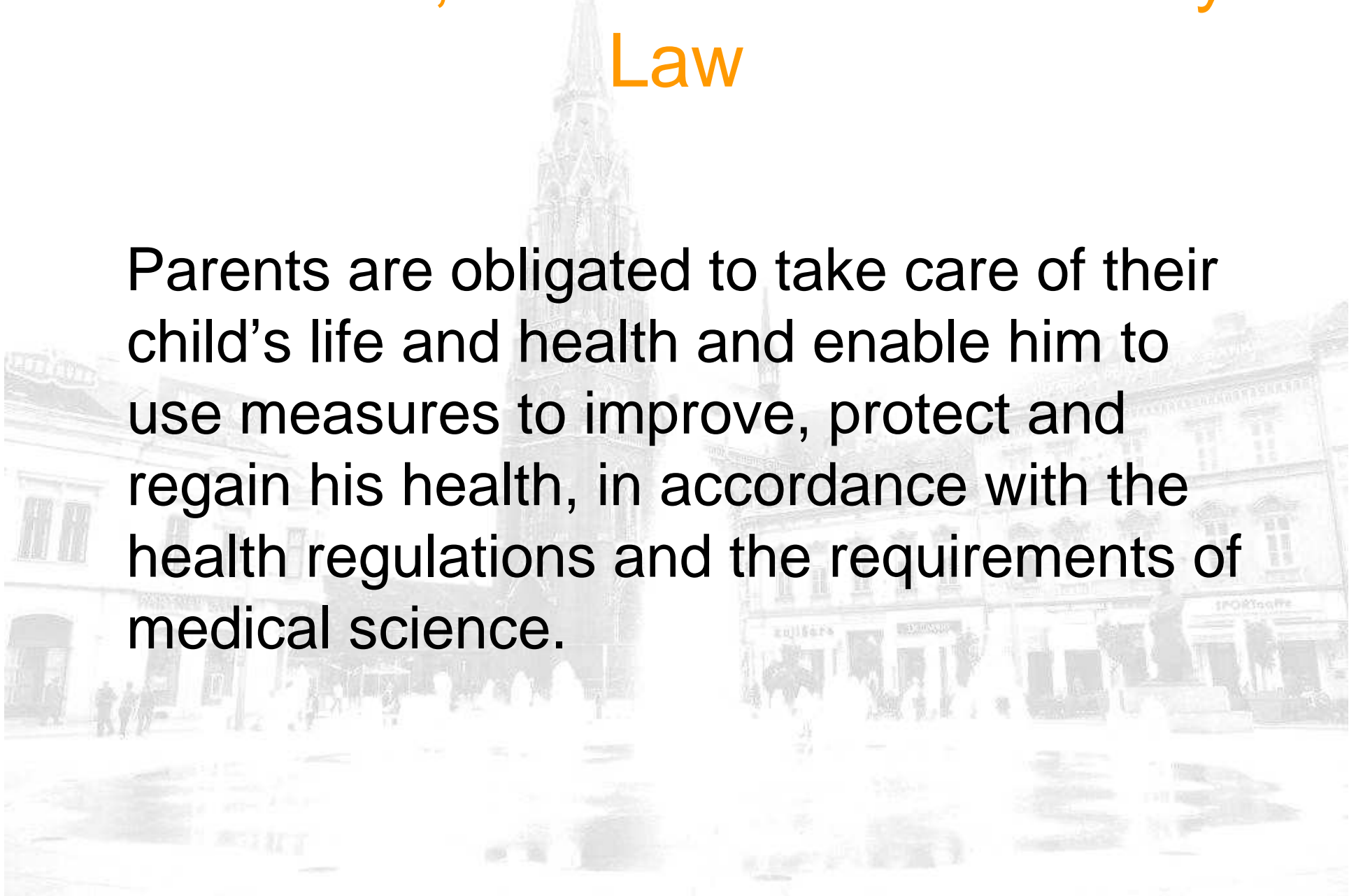
- parents and children
- members of the immediate family
- spouses

For criminal effect, this relationship has to have a legal ground.



Article 92, Section 1 of the Family Law

Parents are obligated to take care of their child's life and health and enable him to use measures to improve, protect and regain his health, in accordance with the health regulations and the requirements of medical science.

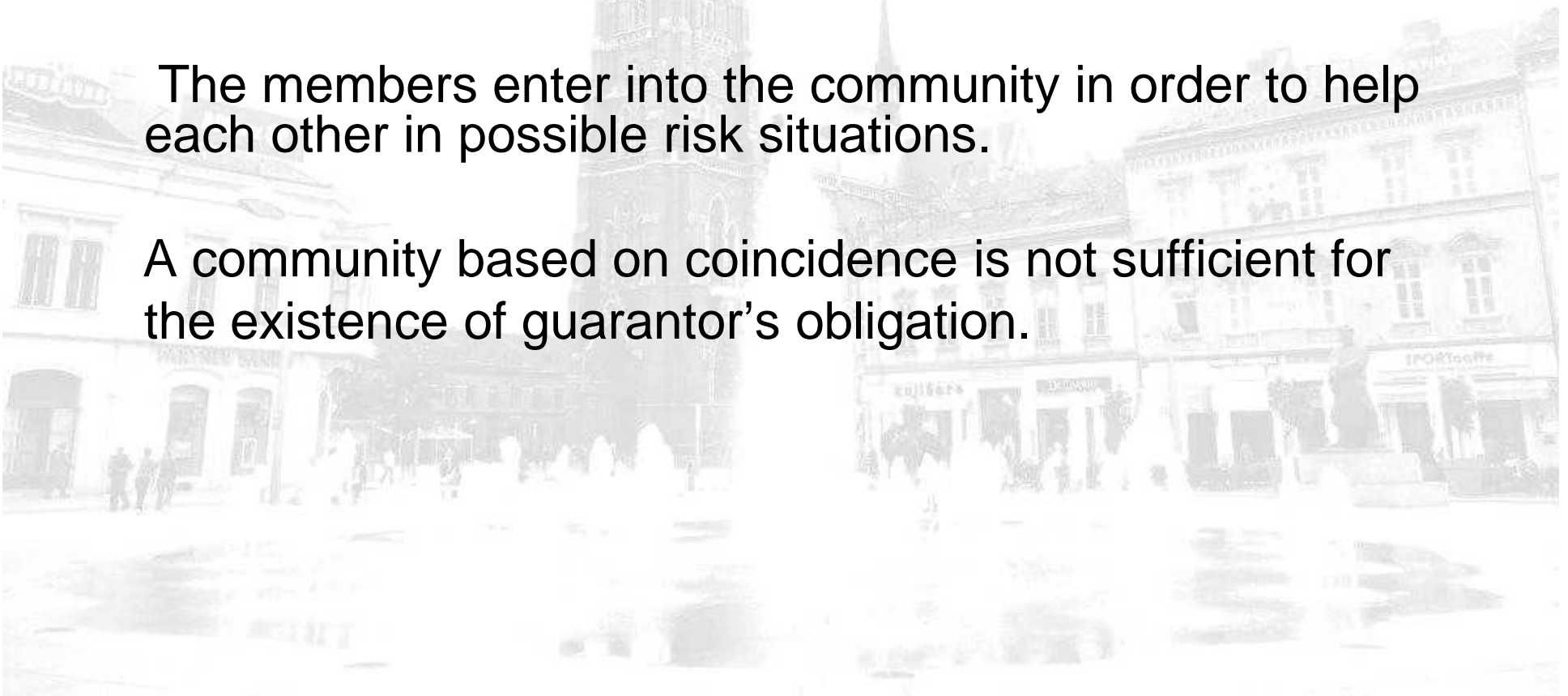


Obligation to protect based on life community

Life communities are based on mutual trust of their members.

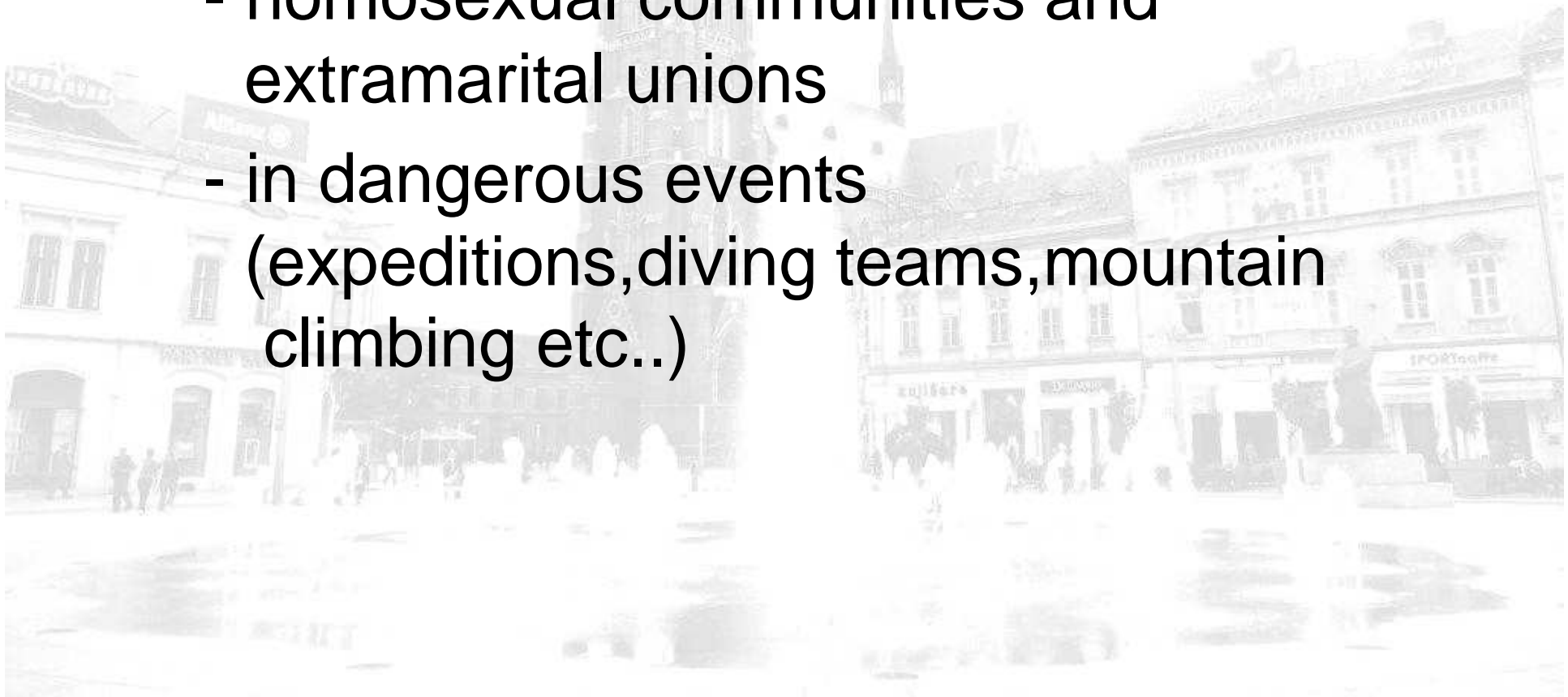
The members enter into the community in order to help each other in possible risk situations.

A community based on coincidence is not sufficient for the existence of guarantor's obligation.



The guarantor's obligations are significant in :

- homosexual communities and extramarital unions
- in dangerous events (expeditions, diving teams, mountain climbing etc..)



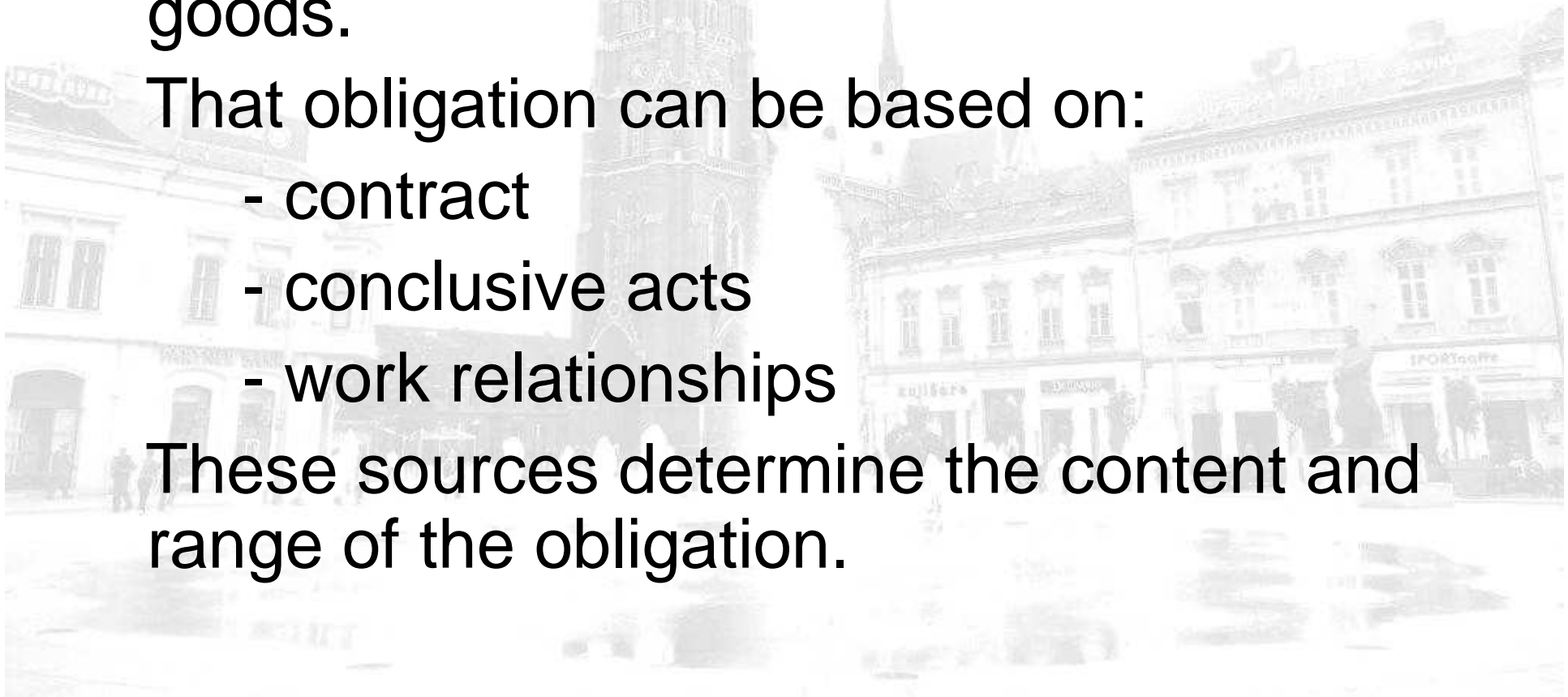
Obligation to protect based on voluntary commitment

A person has voluntarily incurred an obligation to take care of certain legal goods.

That obligation can be based on:

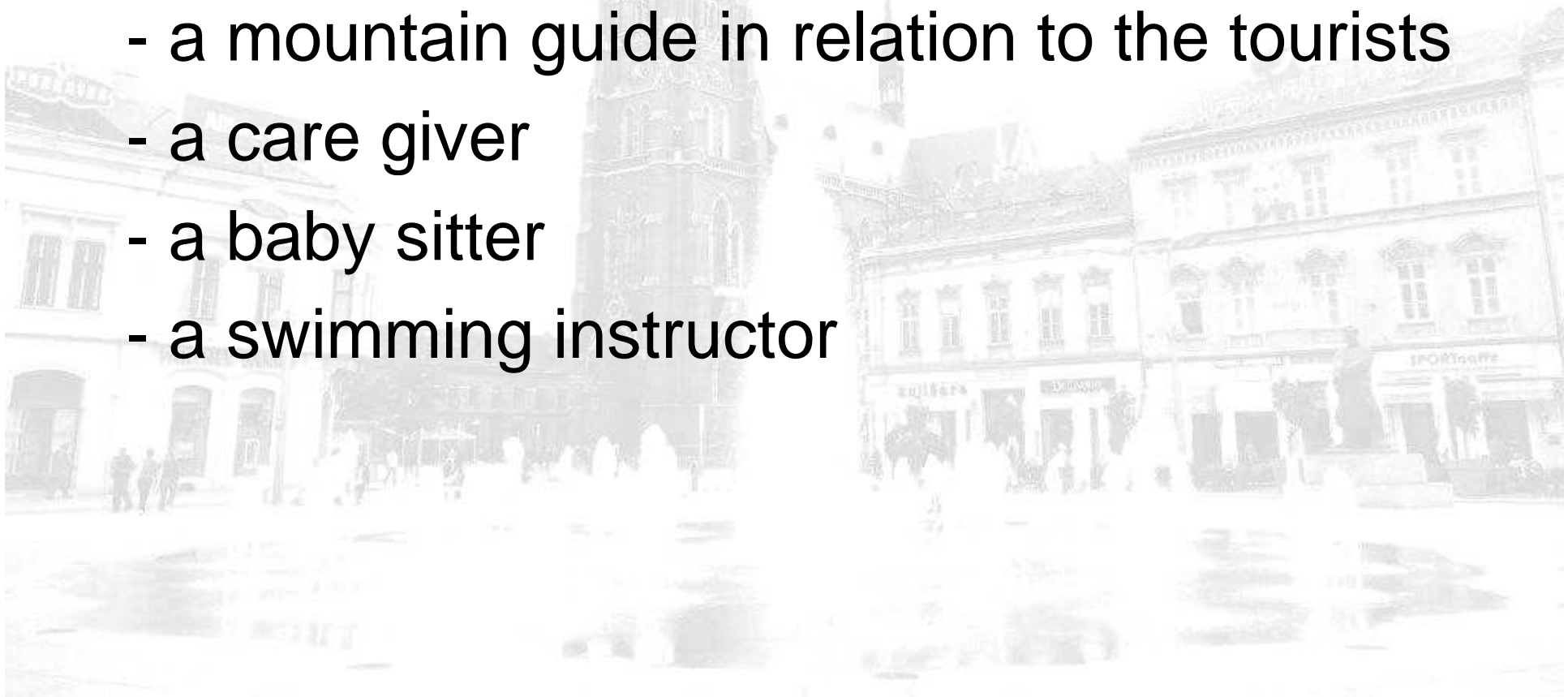
- contract
- conclusive acts
- work relationships

These sources determine the content and range of the obligation.



In that way a guarantor will be:

- a mountain guide in relation to the tourists
- a care giver
- a baby sitter
- a swimming instructor



OBLIGATION TO SUPERVISE SOURCES OF DANGER

Guarantor's position is based on responsibility for certain sources of danger and on his control over these sources.

The guarantor has to have sole supervision over them.

In this group of obligations there are three subgroups:

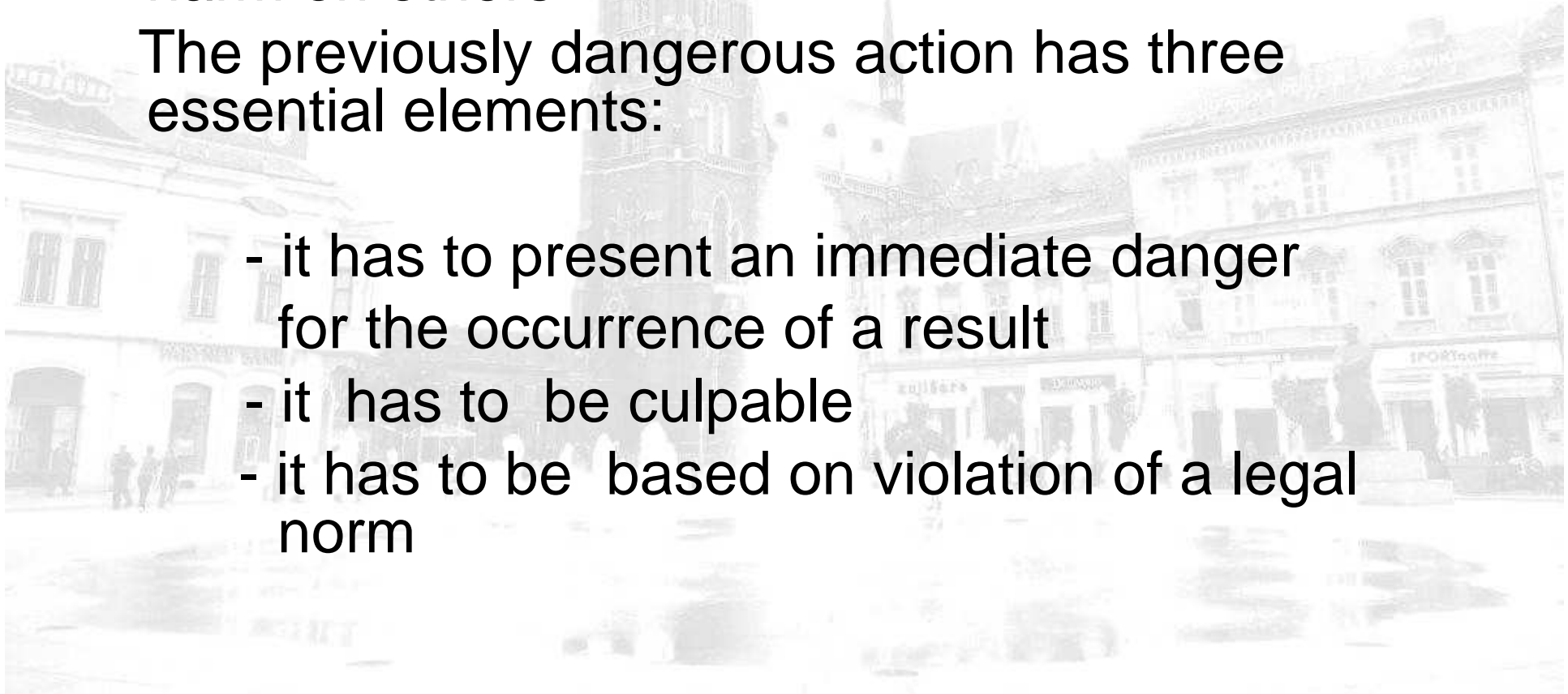
- a) obligation based on a previously dangerous action
- b) obligation to supervise the sources of danger controlled by the guarantor
- c) obligation to supervise the third party

Obligation based on a previously dangerous action

The obligation is based on prohibition to inflict harm on others.

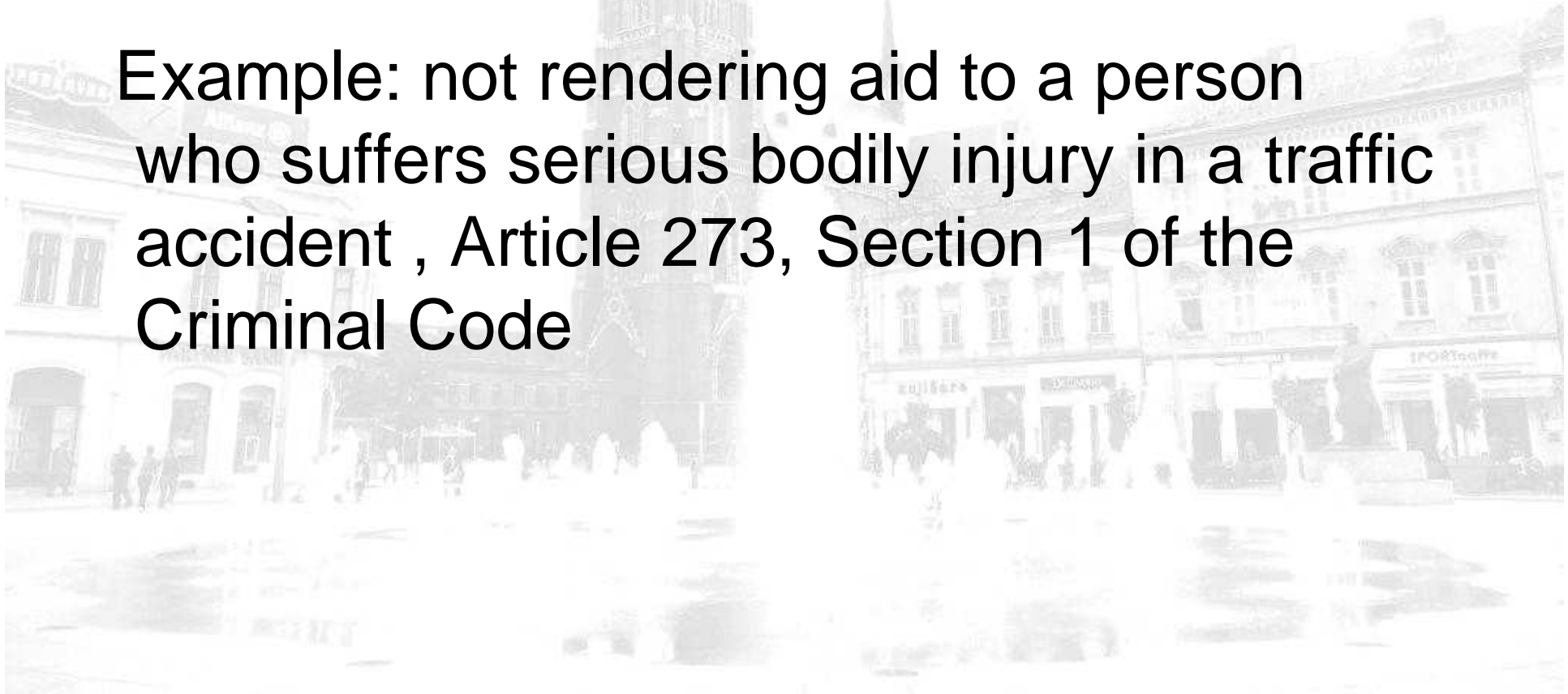
The previously dangerous action has three essential elements:

- it has to present an immediate danger for the occurrence of a result
- it has to be culpable
- it has to be based on violation of a legal norm



Such a requirement can be found in the legal definition of some regulated inauthentic crimes of omission.

Example: not rendering aid to a person who suffers serious bodily injury in a traffic accident , Article 273, Section 1 of the Criminal Code



Article 273, Section 1 the Criminal Code

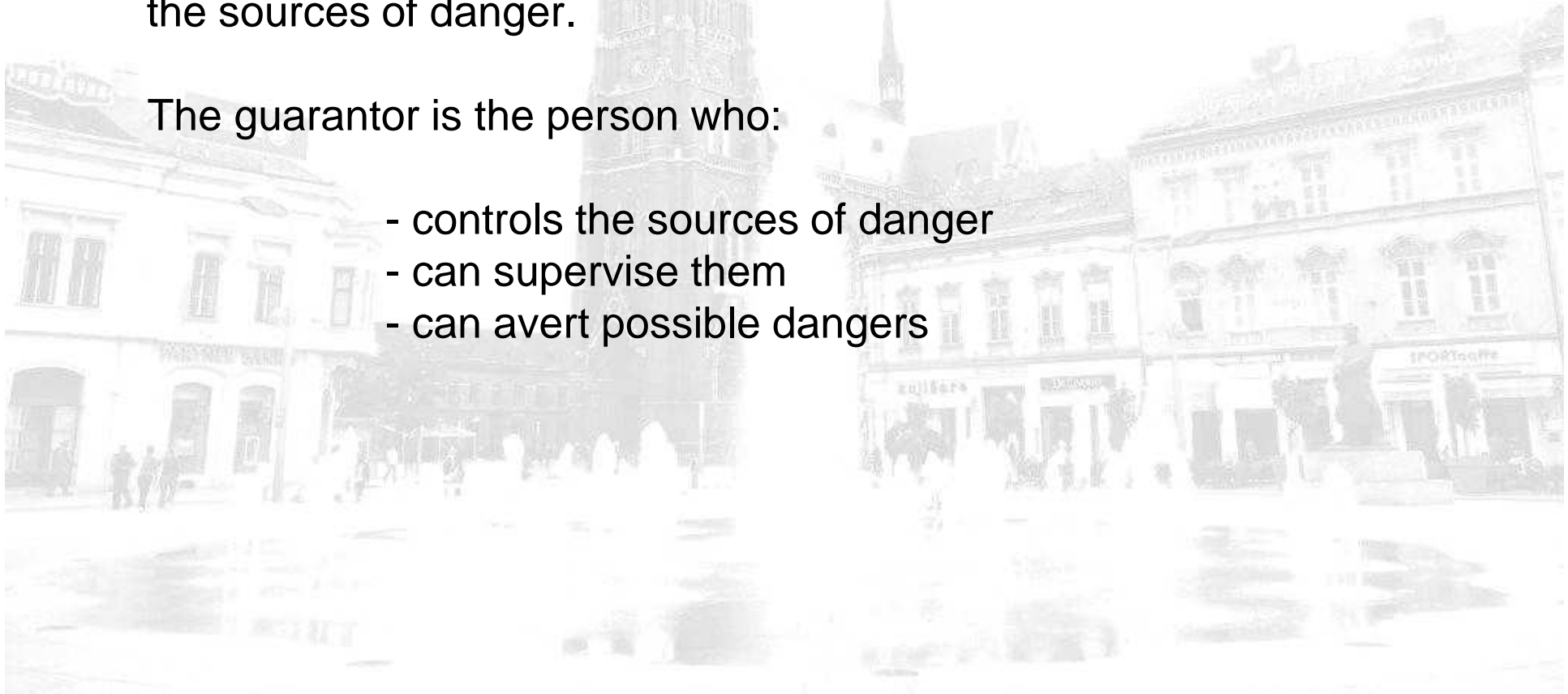
A driver of a motor vehicle or some other means of transport who leaves without rendering aid to a person who suffers serious bodily injury caused by the motor vehicle or transportation conveyance shall be punished by a fine or by imprisonment for three months to three years.

Obligation to supervise the sources of danger controlled by the guarantor

The obligation is based on society's trust in the person who controls the sources of danger.

The guarantor is the person who:

- controls the sources of danger
- can supervise them
- can avert possible dangers





The sources of danger can arise from dangerous situations such as:

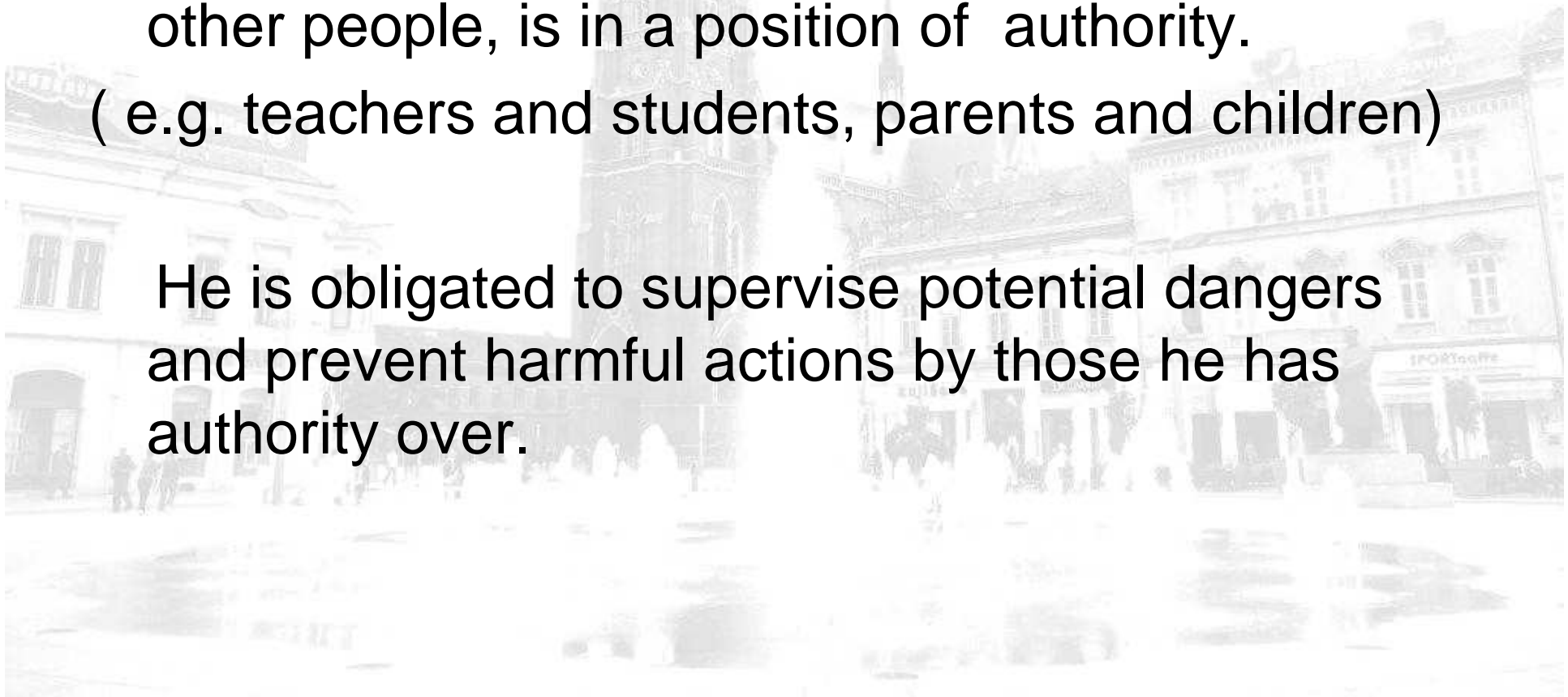
- dangerous facilities (e.g. nuclear power plants)
- dangers from animals
- use of hazardous materials which involve risks (e.g. use of fire)

Obligation to supervise a third party

The guarantor is a person who, in relation to other people, is in a position of authority.

(e.g. teachers and students, parents and children)

He is obligated to supervise potential dangers and prevent harmful actions by those he has authority over.



Thank you for your attention !

